A MAGISTRATE SPEAKS :
NOTHING BUT THE TRUTH

Bishnu Charan Mohanty

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A Magistrate speaks
Nothing but the Truth.....

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O! Woe is me,To have seen,
What I have seen,
See what I see !
Hamlet Act 3 Scene ONE

JUDGE;

" It has always been a matter of wonder to me how trying Magistrates like you, who must decide so many questions on the spur of the moment at the Bench, with your Tour, Tenancy Treasury and Touts, make so few mistakes"

MAGISTRATE;

" Sir, I always marvel that Appellate Judges, unlike you, with skilled advocacy and representation at command make so many damn mistakes".

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INTRODUCTION

This is not an autobiography of the author, but the biography of a Magistrate, both in the Executive & Judiciary exercising powers under the old and the new Code of Criminal Procedure. The descriptions depict the aspirations and frustrations of a young Magistrate who worked with honesty and sincerity for the independence of Judiciary enshrined in the constitutional provision. He was misunderstood by few, who never believed Judicial independence, but warmly appreciated and held in high esteem by those with whom he worked giving the best part of his youth. Fate, often so cruel, dogged him at times when he deserved to be that which he could not be.

The description of places, persons and events, lucid and informative for the new generation of Magistrates, both in the Executive and the Judiciary, will embolden them to discharge their Judicial functions with care, caution ability and independence; for ultimately, the legal fraternity and the litigants do realise that Justice has not been sacrificed at the altar of ambition however inappropriate it may have seen.

A few descriptions shall also work as an eye opener to those, both in the Executive and Judiciary that officers exercising Judicial powers should be left free, or rather encouraged to function without fear or favour, without least obstruction or interference so that rule of law, the prime factor in a democracy shall thrive in this great country.

The work is highly informative as to how Magistracy functioned before independence and after it. It unfolds the picture of separation of Judiciary from the Executive, one of the directive

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principles enshrined in the Constitution and how it worked step by step overcoming hurdles, to the present stage. Young officers both in the Executive and Judiciary shall immensely benefit to know how the system evolved to stay put.

Every conscientious officer in all services receives pinpricks from unscrupulous seniors. At times it becomes devastative as in the case of the author. But it is amply compensated by public esteem and trust and the ultimate respect that is gained. Such officers are never forgotten.

I have watched the Magistracy, both in the Executive and the Judiciary for over four decades from outside and also from inside, from the lowest to the highest and am a firm believer of independence of Judiciary at all levels which at present shows a downward trend. Things are not so now as they were prior to the fifties and sixties. There is alround deterioration in quality and output. In this backdrop the Magistrate's biography shall work as an oasis to those who will read and immensely benefit from it. It also delenates briefly the Judicial system in the United States which is highly informative.

I began to know the author, Sri.Mohanty since the fifties. He worked as a Magistrate both in the Executive and Judiciary with great distinction and earned laurels from the Bar and the public. My only regret is that destiny played harsh on him for otherwise he would have reached great heights. But now it has lost its relevance, because, he lives in the heart of those who knew and worked with him.

Please read this book.

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OPINIONS

BAIDYANATH MISRA,
Formerly District Judge,
Secretary, Orissa Legislative Assembly *Jaypore*

In this virtual memoir, Sri Mohanty who was an officer of the Orissa Administrative Service succintly narrates his experience as a Magistrate both before and after the separation of Judiciary from the Executive, and also the information he has gathered, concerning working of courts in USA some of which he had occasion to visit. Undoubtedly he has spoken the truth. Candidly, he admits his inadequacy and ignorance of law and procedure at the beignning of this career. His experience as such will surely be thought provoking to many conscientious officers in the Judicial Service and to public men unaware of the rot pervading the judicial system.

The case of Sri Mohanty may not be a single incident of the kind. There are instances in judicial service where competent officers instead of being rewarded are humiliated. Sycophancy and other considerations; often outweigh honesty, integrity and competence. The rot is in the system and the victim has no alternate forum for redress against arbitrariness of the concerned authority or to advise it objectively. As observed by the Law Commission in its XIV Report in the long past, no person not acceptable to the Chief Minister of a State has ever been appointed as a Judge in the High Court. The system continues and we have had committed judges too. The rot tickles down even to the appointment of District Judges by direct recruitment irrespective of merit. Committed or otherwise pliable functionaries cannot be free from pride and prejudices or the weakness of likes and dislikes. The fall-out on the subordinate judicial service affecting independence and fairness

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in discharge of duties cannot be avoided. The result is that inefficiency has crept in at all stages and inordinate delay in disposal of cases and mounting back-log causes concern. The system of Lok Adalats, a new feature is said to be designed to counter the rot and promote speedy justice. What happens, herein, is disposal of cases on compromise following sermon of dignitaries, sometimes, judges and ministers (politicians) speaking from the same platform. This will not help. Political influence must always be kept at bay, and judicial officers must be allowed to function in a free atmosphere, committed only to judicial decorum. An independent agency akin to the commission for judicial performance as in California (USA) may help to create such atmosphere, as the commission will be able to have an objective view and help the High Court in the matter of discipline. Public to whom the judiciary is not accountable will also be benefited in having a forum to hear their grievances.

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The author Bishnu Charan Mohanty has come out with this book in his seventies with a flair to clear some of the rots in our administrative and Judicial system. The print in this book is not imaginary. The author has given expression to what he experienced in his service career both in the Executive and Judicial wings of the State.

His hope and ambitions floundered on the rocks of egocentric bosses. He had entered service to serve the country in one's field with impartiality and cordiality which has been acknowledged by his friends and members of the Bar in his functions as a Magistrate both in Executive and Judiciary. He endeared himself to the litigants and members of the Bar, by his observance of Socratic canons which belong to a judge.

"To hear courteously;
to answer wisely;
to consider soberly;
to decide impartially.

He also speaks of 'Panch Sheel' and seven Lamps which guided the magistrates who were being trained by senior officers. The system of training was quite systematic and senior oficers were taking sincere interest in the trainees. The author therefore laments the present system of administration of Justice by inexperienced officers whose procedural ignorance and incapacity to appreciate law and felt needs of society has resulted more in the miscarriage of Justice than its just dispensation.

The suggestion of the author for training and an infrastructure where the magistrate will work without fear and favour is very timely and it needs active consideration by those in the helms of affairs

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to bring about a rapid change in the system, for the beneficiaries of the system as well as tó enhance the image of the Judicial and Executive officers in charge of legal functions.

The outlook of the whole system should be oriented towards Welfare of the people and demands of social security. Justice Holmes observed that Law is not a brooding omnipotence in the sky but a flexibly instrument of social change. Architects of our judicial system should pause ard think for a moment to what extent the country has benefited from the system, inherited from an alien rule.

The lingustic style is simple and makes reading quite enjoyable for the thought provoking wise cracks furnished in each chapter along with a whole chapter on a wise acrc. The book sustains the reading interest till the end.

The author will be amply rewarded if the book is read and the earnest plea for a reform provokes action it deserves.

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PROLOGUE

"WE look before and after,
And pine for what is not,
Our sincerest laughter with some pain is fraught,
Our sweetest songs are those that tell of saddest thought"

--P.B.Shetty (1792-1822)

Pretended justice is the worst form of injustice

-- Plato

This is the study of a Magistrate at work. Despite the attention of countless litigants, our understanding of what a Magistrate does and what are his constraints is limited. On appointment as Sub-Deputy Collector before independence, I worked mostly as a Magistrate in addition to other duties at District and Sub-Divisional Headquarters for about 14 years. On the separation of Judiciary in 1960, I also worked half that long as Judicial Magistrate in charge of Sub-Division till circumstances compelled me to quit. The persons in authority at the top behaved like satrap of a Feudatory state succeeding to the paramount power of Rex Imperator. If I had experience of unscrupulous Administrative Officers exercising the powers of District Magistrate incapable of appreciating the finer points of law and Jurisprudence, judging competence on the basis of percentage of conviction. I also had experience with District Judge who had spent best part of life in mofusil courts your- honouring only Sub-Deputy Collectors, in service denigrating Administrative Officers to cover-up inferior intellect , lack of respect for merit or idealism and poor acquaintance with men and matters in Government and Administration. Many colleagues have enriched my understanding by allowing me to share their experiences. If it did not serve their own interest, a few in either Executive or Judiciary were prepared to be

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guided by their own commitments. It was so disgraceful, I quit with no rancour against any individual. I blame the system. I feel that for others to benefit from it, my experience needs recording. As Benjamin Franklin says

" If you would not be forgotten
As soon as you are dead and rotten
Either write things worth recording
or do things worth writing"

I have tried to be objective in this study Grievance, obligation and affection can impact a bias. If despite my efforts bias and factual errors have crept in, I would be grateful to be shown where.

BISHNU CHARAN MOHANTY

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CHAPTER - I

SANS BLUE TAPE OR WHITE CAP

> *Success depends upon three things ; who says it, what he says, how he says it; and of the three things what he says is the least important.*
> **- Viscount John Morley (1838-1923)**

Orissa Administrative Service substituted the Orissa Civil Service after the I.C.S at the All India Level was replaced by the I.A.S, Direct recruitment to Orissa Civil Service had been stopped on the formation of Orissa State on the recommendation of the Orissa Administrative Committee chaired by Sir John Austin Hubback who was the Commissioner of Orissa and became the first Governor of Orissa province in 1936. Orissa Subordinate Civil Service was the feeder of Orissa Civil Service. It was cheaper.

A wag had described a Sub-deputy Collector (A member of Orissa Sub-civil Service) as a low-paid Deputy Collector, Eminent civilians of Orissa like R.P.Padhi, K.K.Samal,Bhaba Kr. Mohanty, Jagannath Das, B.N.Das, B.B.Rath, Durga Prasad Tripathy, Rabinderanath Mohanty, Gopinath Mohanty started as Sub-Deputy Collector and had brought glamour and credit to it. I had the privilege to belong to their distinguished company when I started as a Sub-Deputy Collector in 1946. The scale of pay of a Sub-Deputy collector was Rs. 100-110-144-6-235. One earned the third increment at Rs.144/- after he had qualified in Departmental examination in both civil and criminal law and in accounts besides submitting records of six criminal cases.

The cadre of Provincial Civil Service including the Junior Branch was controlled by the Home Department in matters of recruitment, promotion and other conditions of service. Home and Finance had no separate Secretary. The Chief Secretary functioned as the secretary of both the departments. In the whole secretariat there was one Under Secy, in the Home Department. He belonged to the junior branch of the Indian Civil Service. Provincial service officers when posted at the secretariat functioned as Asst. Secretary only. My appointment letter signed by Q.U.Sahab I.C.S

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indicated that the notification had been approved by R.A.E Williams, the Chief Secretary. On appointment Sub-Deputy Collectors were invested with the powers of a Magistrate of 3rd class. The Code of Criminal Procedure 1898(V of 1898) which preceeded the present Code of 1973 contemplated in Sec 6, five classes of criminal courts viz. Courts of Sessions, Presidency Magistrates, Magistrates of 1st class, Magistrates of 2nd class and Magistrates of 3rd class. The sentences which the magistrates of different classes could pass had been shown in sec 32. A Presidency Magistrate (located only in Presidency towns) and magistrates of first class could pass sentence of imprisonment for a period of two years including solitary confinement and fine not exceeding one thousand rupees besides whipping. A second class magistrate could impose imprisonment upto six months including solitary confinement and fine not exceeding Rs. 200/- A Magistrate of the third class could award sentence of imprisonment upto one month and fine not exceeding Rs. 50/-. Code of criminal procedure and other local and special laws detailed the court that could try any offence. The Code permitted magistrate of third class to be specially empowered to try offences ordinarily tried by a Magistrates of second class (like Excise and Forest offences) and Magistrates of second class to try offences ordinarily tried by a Magistrates of 1st class (like offences under the Essential Supplies Temporary Powers Act corresponding to Essential Commodities Act) The second schedule of the old Cr. P.C besides indicating what is shown in the first sch. of 1973 code also showed if the particular offence was compoundable or not, and whether a summons or warrant was to issue at the first instance by the magistrate who took cognizance of the offence. Unlike the present 1973 code in its third sch. the old Cr. P.C. catalogued the ordinary powers of a magistrate of 3rd,2nd and First class, which had been invested on him in sec.36

The notification empowering a person to exercise the power of a magistrate was issued by the Govt. It empowered him to record evidence in English. It was considered a pride and privilege to exercise that power. The senior magistrates used to guide Juniors and impress upon them the desirability to exercise it in the name of God as one sat in the dais of court (Dharma Simhasan). It was this commitment to the Almighty and to the luckless in society that guided ordinarily the philosophy of the magistrate. I got my 3rd class powers in 1947 at Nowrangpur. The Sub-Divisional Magistrate (designated as special assistant agent in the partially excluded area where the Collector was Agent to the Governor having his special responsibility in governance of those areas under the Govt. of India Act 1935) used to hear appeals from the sentences of magistrates of 3rd and

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2nd class u/s 407Cr. P.C. In governance of partially excluded areas like Koraput and Sambalpur, the Governor had certain special responsibilities. The Collector as an Agent to Governor under Ganjam and Vishakapatnam Act 1839 was the Dist and Sessions Judge. Appeals and cases filed before him used to be transferred to the Additional District & Sessions judge at Jeypore who was from the regular judiciary. A Sub Deputy Collector before he drew his 3rd increment in the scale of his pay had to submit case records after attending trial in two sessions cases and four cases tried by a magistrate 1st class. He used to prepare the records in such a manner as to convince the Legal Rambrancer, to whom the records were submitted for evaluation, that he was thorough with the procedure for trial of summons and warrant cases before the magistrate and the procedure for trial in Sessions case along with commitment proceedings. Besides he had to show his knowledge of Evidence Act by pointing out the relevancy and admissibility of the evidence by different witnesses in the course of trial. I had two sessions cases to watch, with Jagannath Mohanty (who was later elevated to the Bench of Orissa High court and died in harness) as the Sessions Judge Jeypore. A murder case before him was defended by Rai Bahadur Cintamani Acharya, (later the Vice-Chancellor, Utkal university) a prominent criminal court lawyer of Cuttack. The prosecution was conducted by the Public Prosecutor who was also the Govt. Pleader Rachkonda Jaganath Rao who later joined active politics and was a Minister of State for Law at the centre, was the Govt. pleader. He and the eminent jurist, Jagdish Nayak were the doyen of Jeypore bar. Pleaders from outside the district when appearing had to get permission to practice. During sessions trial in lunch break, Jagannath Mohanty would explain to us the sessions business and what came to be known as the Panchasheel (ପଞ୍ଚଶୀଳ) of Judiciary without telling it so. He would emphasize in a magistrate. 1.INDEPENDENCE 2. INTEGRITY 3. IMPARTIALITY 4.WISDOM AND 5.LEARNING.

A book very frequently referred to by the senior magistrates and Judges to be read by new entrants to the service was Magisterial and Police Handbook by justice P.N.Ramaswamy ICS of Madras High Court. The book an MLT publication then in one volume was later in its second edition in 1951 published in 2 volumes and was very popular with both the Bench and the Bar. The book contained one chapter Seven lamps of magistracy and it is worth reading at any cost. The chapter started with William Pitt's quotation 'where law ends, tyranny begins'. The rule of law is the condition of liberty. Amid the cross currents and shifting sands of public life, the law is like a great rock upon which a man may set his feet and be safe while the inevitable inequalities of private life are not so dangerous in a country where every

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citizen knows that in the Law Courts at any rate he can get justice 'Lord Sankey L.C.'. The importance of magistracy to national well-being can not be easily exaggerated. For it is on the maintenance and enforcement of the Reign of Law that civilization exists. The alternative to the reign of law is the life of primitive savagery. The position of the magistrate is therefore one of great importance and responsibility. The seven lamps which could illuminate the path of the magistrate and guide him to the right goal are described:- 1.HONESTY 2.STUDY 3.ROBUST COMMON SENSE 4. FIRMNESS 5.PROMPTITUDE 6.COURTESY 7 SENSE OF HUMOUR.

The Bar at Nowrangpur and Koraput was manned by pleaders who were not necessarily law Graduates. Simadri Mishra, Balabhadra Narayan Samatarai (Members Orissa Advisory committee 1936 and nominated member of Orissa Assembly 1937-44) monopolized practice at Nowrangpur. Harihar Mishra later M.L.A and President Utkal Sammilani, Kotu Chelpati Rao and his son Kotu Satyanarayana also used to appear in courts at Nowrangpur besides Jagadish Nayak. The definition of pleader is Sec.4 (r) of 1898, Cr.P.C. included Advocate, Vakil, Attorney any other person appointed with the permission of the court to act in such proceeding. Though lacking in formal legal education such pleaders were knowledgeable and guided the court without taking advantage of the inexperience or ignorance of Magistrates. Sri S.N.Pujari, the Sub-Divisional Magistrate did not believe in learnings law from books. He was a believer in what Oscar Wilde had said that "people commit mistake learn from it and it is called experience" Experience is the name everyone gives to their mistakes." He used to say that good judgments come from experience and experience comes from bad judgments.

On getting Magisterial power offences under the Town Nuisance Act ordinarily used to be handled by me. I got a chance to try an offence under the Indian Penal Code on Police report after a month or so. My colleague Bharat Ch. Tripathy engaged in survey of land for resettlement of displaced persons from Mackkund Hydro Electric Project, (the first such in Orissa to be executed then as Duduma Project) had gone to a village near Umerkote accompanied by his peon. He had sent for the village Headman, the Naik, revenue collecting agency of Jeypore Samastham (Zamindary). The Naik was tipsy. He appeared but did not behave properly to answer questions put in the matter. Tripathy reported the incident at the P.S. The Officer-in charge to oblige the Magistrate but not to hurt the Naik who was rich and influential and belonged to a Sch. Tribe of Bhatra, filed a prosecution report against him under section 510 I.P.C. The section read" whoever in a state of

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intoxication appears in any public place and there conducts himself in such a manner as to cause annoyance to any person shall be punished with imprisonment which may extend to 24 hours or with fine which may extend to ten rupees or both for the offence" Cognizance of the offence was taken on the police challan. The accused was summoned. He appeared. The case was transferred to me. As I was going to take up the case, I could see the accused sitting under the big Bakul tree in front of the court with 2 bagful of one rupee coins and boasting that he would pay double the fine and quit the place early. He responded to the call of the court peon, entered the dock of the accused and pleaded guilty. Youth and indiscretion are ill wedded companions. Instead of sentencing him to a fine I sentenced him to imprisonment for 24 hours and directed the court Sub-Inspector to keep him in the lock- up. The local jail was then managed by the Rev. Dept. through the Taluk Magistrate as supdt. He was not prepared for it and was shocked. The court sub-Inspector wanted to complete the formalities early to send him to prison. My friend, pleader Simadri Mishra came to his rescue, got the certified copies immediately and moved the appellate court and obtained stay order. The appeal was heard the next day. Sri S.N.Pujari, the Sub-Divisional Magistrate sitting on appeal reduced the sentence of imprisonment to the period already undergone. The 2 bagful of rupee coins was paid to Simadri Mishra towards fees. Later that week Pujari advised me to be discreet and to exercise the discretion imposed by statute, in a judicious manner. I learnt the first lesson in Judiciary.

Shortly after I was transferred to Sambalpur. My posting was against a Magistrate Second class, who had been transferred from the Dt. Hqr. As I was a Magistrate 3rd class I had to be recommended for higher power on the basis of my performance. I continued as Magistrate 3rd class and tried offences like criminal trespass (U/s.447) house trespass (U/s.448) theft (U/s. 379) and theft in a building (U/s 380). I had to finish trial within the shortest period so that the case records were made available to the Addl.Dist. Magistrate who on examining it was to recommend me for my higher power. The criminal court bar consisted mostly of Muktears, Bhakta Pr. Dani, Sadhu Ch.Bohidar, Nabin C. Pandey, S.K.Das besides Giridhari Mohapatra who controlled the bar. Because of a facial paralysis even with heavy file, Giridhari Mohapatra appeared only in a few cases. He used to assist in sessions trial very creditably. The bar was cooperative, Trials of about a dozen contested cases were completed in course of six weeks. No appeals were preferred, which otherwise would have given the Addl. Dist. Magistrate as appellate court to examine the records and judge my legal acumen. He called for me with two case records of disposed of cases. My peshkar went with the records.

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He saw it in court and sent for his Judicial Peshkar, the chief ministerial officer in Collectorate designated as Magisterial Head Clerk (MHC) in South Orissa and in our presence asked him to scrutinize the records. Iswar Ch. Mohapatra who on his retirement practised successfully as a Muktear at Kuchinda had been a Peshkar for two decades on criminal side working under very renowned Magistrates both British and Indian. Various sections of the Cr. P.C. and the general letters and circulars of Patna High Court were on his finger tip. He could quote a High Court circular, cite its number and date and the name of the Registrar of High Court who had circulated it. It fell to my lot to see him standing and scrutinizing the case records and one by one cataloguing the defects to ADM, sitting on his dais, with me by his side. The heading in the court of 'X' had been shown as before 'X'. Then the difference between the two were explained quoting section 6 Cr. P.C that created different courts. The paragraphs had not been numbered violating so and so circular. Police case R.I.Vrs. X should have been written as Rex Imperator (King Emperor now shown as State) Vrs. 'X', giving the age of the accused in bracket after his name as required in circular so and so, so that R.I. is not confused with rigorous imprisonment. The prosecution case should have been given in the first para in brief before witnesses are quoted with their evidence. He would support that with the prescribed circular. My benefactor, the ADM would simply nod and look at me. It took about half an hour to scrutinize one record. It was completed in respect of the case records brought. Although I was then feeling uneasy, I later realised that it was an hour fruitfully spent which paid me rich dividend years later. About four decades later I wish our new set up would have profited enormously had the subordinate Criminal courts been inspected and records scrutinized on the basis of instructions given in different General letters and circular orders. Unfortunately the magistrates now receive no such practical instruction which results in muddling. In my case as no irregularity or illegality was detected in procedure or in the order passed, the deficiencies detected on close scrutiny were treated as minor and excusable and it was taken that they would go away with experience, I had by then passed the Crl. Law in Departmental Exam, another prerequisite to exercise higher power. So I was considered fit to be recommended to exercise second class powers. But before that recommendation could be acted upon my second class power came. The Dist. Magistrate Koraput had earlier recommended for it to Govt.

As I functioned as Magistrate Second Class in 1948 with the merger of Princely States, experienced officers were sent out. The strength of trying Magistrates got depleted. A few not very experienced were left to shoulder the burden of trial. But before I could exercise powers of second class

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Magistrate, I had to learn another lesson from a hardened criminal Jangilal Kurmi. He belonged to South Bihar and was a member of a Scheduled Tribe. He operated as a railway criminal in between Kharagpur and Jharsuguda. The jurisdiction of Orissa GRP extended over the route. There was a GRP police station at Cuttack and an outpost at Jharsuguda, Jangilal would go to Kulanga, now a small railway station near Rourkela which was then an insignificant station. Both up and down Bombay mails from and to Howrah used to meet at about midnight at Kulanga. He would enter a second or inter class compartment, catch hold of a small suitcase taking advantage of the passengers sleeping and drop it through the window openings that had no railings. His accomplice waiting outside would collect it. Both would return to the corresponding up or down train. This modus operandi had worried the GRP who at last had located the gang, arrested Jangilal in a theft case and forwarded him to court. He was a court bird with a number of previous convictions to his credit. He stood at about 5'2", had a ferocious look with a flat nose and scar marks on the face, below the cheek and chin as a result of stab wound sustained in course of group fighting. As he was a hardened criminal, he had been brought to Court in leg shackles besides handcuff. It was removed before he entered the Court Hall. The nameplate at the court indicated the power of the presiding officer. Perhaps Jangilal knew reading Oriya or English I could hear him muttering repeatedly "third class magistrate" as he entered the Court room. It appeared a soliloquy to me. I enquired of him as to what the matter was. My knowledge of Hindi was rudimentary. His accent on words was also not intelligible to me The court sub-Inspector acted as a guide but he hesitated to inform me what the under-trial prisoner was emphasizing .Pressed repeatedly the Court Babu explained that the prisoner had a grouse. He was a hardened criminal and had a number of previous convictions to his credit. He had all along been tried by a Magistrate of 1st class. He headed a gang of followers (Shagirds). He was aware of the limited power of a 3rd class Magistrate to impose a fine of Rs.50/- and conviction upto one month. Conviction in this court would belittle him in the eyes of his followers who would take it that he had committed some petty theft of a chicken or vegetable. As it concerned his prestige among his chellas and in the social status to which he belonged his request was that he may not be tried in that court. Obviously, the prayer was to send him to a First Class Magistrate for trial. I explained to him that due to deputation of experienced officers elsewhere we had paucity of Magistrates and that after recording evidence if I find that the offence against him is proved and that he should receive punishment more severe than I can impose, I would send him with the records to the Sub-Divisional Magistrate who had transferred the case to me. The Court Babu translated my Oriya to

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Hindi and explained to him. His eyes gleamed with joy perceptibly. He exclaimed "Abb Samajha (Now I understand) you mean 349" It was a reference to the relevant section in the Cr.P.C. I was stunned and nervous.

A date was fixed for recording evidence. Witnesses were summoned. They appeared on the next date, one or two witnesses had been examined. Prosecution then produced a witness who said that the accused had dropped the suitcase recovered and he has collected it outside the compartment. He had made it over later to the accused. No sooner had the witness said that I was going to record it, Jangilal left outraged. He shouted" He can not say that, His evidence should not be recorded. See.30 is a bar" I started recording. The court Babu also overruled his objection for me. But he was adamant. "Huzur refer to section 30 Huzur would agree Huzur. This is miscarriage of justice." He was shouting, I had no idea as to the objection raised. On his persistence I referred to the Sec.30 Cr.P.C. taking the book from the revolving rack on the court dais. It referred to enhanced power of Magistrate of 1st Class, to try offences not punishable with death. My experience with him on the previous occasion had made me feel that he was conscious that I am a 3rd class Magistrate and was harping on that again. But the persistence did not cease. At the top of his voice he shouted "This is very strange. The Magistrate knows no law. That is why I was hesitating to be tried by a Third Class Magistrate" The emphasis all along was on Third class as if it was an untouchable entity or a disgrace. His shouts attracted by standers and litigant waiting in Courts by the side. His repeated reference to 3rd class powers made me blush. The Administrator Bamra State, Kishore Ch, Das a very experienced ex-Madras officer was sitting in the room next to me, He sent me a slip to see him. It was about 2 P.M.. I got an excuse, adjourned the proceedings for an hour and went to him to be scolded for ignorance of law, very rightly by accused of the criminal. The section he referred to was in Evidence Act. "Where more persons than one are tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved; the Court may take into consideration such confession as against such other person as well as against the person who makes such confession." The witness was making a statement. He was not an accused. He was not being tried along with accused. Very correctly he raised the objection which I did not consider only to show my ignorance of law of evidence. As trial resumed. I recorded his objection, completed the trial, sent the record to the SDM who convicted him of the offence on other evidence available and sentenced his to R.I. for two years. He had other charges pending against him else where. He was sent to Balasore much to the relief of the local Magistrates and the jail staff.

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He made me wiser to refer to Evidence Act very often. A distinguished Graduate and a Magistrate I felt how ignorant and small I was before him, a hardened criminal.

Sri Bira Kishore Ray, the Chief Justice of Orissa High Court that had started functioning on 21st July 48 had gone to Sambalpur on his first official visit. The Dist, Magistrate circulated the relevant Rule in the Orissa Police Manual as to the Courtesy to be shown to him. All Magistrates should call on him at the Circuit House. He met magistrates both senior and junior individually to acquaint himself with their problems and view points. By the time I was a Magistrate 2nd Class. He had known me earlier by the face as I was living with an Advocate close to his house in my student days. He would see me during his evening stroll. With a friendly smile he enquired about the cases I had tried and any particular case, that I could readily remember. Soon after Mahatma Gandhi's assassination police had pounced upon Rastriya Swayam Sevak Sangha Volunteers, all school boys and had started criminal cases against them for criminal trespass and rioting u/s 447 and 147 I.P.C at Jharsuguda. The school where they drilled was a public institution maintained by local Marwaris and Gujratis at Jharsuguda. The Management had no objection. Their common object was also not unlawful by any stretch of imagination. During the course of the trial the accused persons who had been identified earlier in a T.I. parade were also not identified. The Magistrate or the identifying witnesses were not examined in court. Neither the offence of criminal trespass nor rioting was proved. I had acquitted the accused persons on 14.4.48 but in my judgement there was one sentence- 'The Police has unnecessarily meddled in the affair of school boys showing what mischief, arrogance and misplaced power can work'. The Supdt. of Police believed that the case failed because it had created a sensation and the witnesses were later gained over. He termed the observation by Magistrate as perverse and wanted him to expunge the last sentence from the judgement. The S.P.'s letter to Dist Magistrate was forwarded to me. I pointed out that only the High Court had power to expunge the words in exercise of their inherent power u/s 561/A, Cr. P.C. and that the S.P. should withdraw his remark unconditionally. The Addl. Dist Magistrate had closed the matter with the observation that the tone of the Magistrate lacked restraint and moderation. As I finished the eminent C.J. just smiled. He then enquired how I framed charges. My reply was that as it is very insignificant charges. I put the words as I understand. He enquired if I had seen Law of Crimes by Ratan lal or Harisingh Gour. To my reply in affirmative as to their being a model charge given after each penal section he observed that I should have known that not for nothing it was there. Even senior

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Magistrates and Judges while they framed charges referred to the book and I should not rely on memory. It was a sound advice that I literally followed from that date for two decades and very profitably too.

I had submitted my prescribed case records prepared before the Session Judge and Magistrate 1st class to the Legal Remembrancer. In Govt. memo no.9842/p dated 17.10.47 the L.R had observed that "the officer has taken great pains in preparing the records and has summarised the criminal procedure in his general notes exceeding well. Govt. are pleased to specially commend the good work of the officer in this connection and request that the special commendation may be communicated to the officer" I was not a Law Graduate then but the commendations encouraged me to attend to Magisterial work at considerable loss of personal facility and financial gain, Certain Magistrates at district headquarters were earmarked for doing judicial work and I had it always as my first choice.

A word about the prosecuting agency in courts. The public prosecutor, meant any person appointed under section 492 U/s 492 (2) CR. P.C. the Dist, Magistrate could appoint any police officer not below such rank as prescribed by Govt. as Public Prosecutor. If a private party engaged a pleader he could only assist the public prosecutor who was responsible for the success of the case. There was one P.I. for a district and one or more prosecuting sub-inspectors at sub divisional headquarters to conduct police cases which included besides congnizable offences charge sheeted by the police, prosecution reports (challans) submitted by the police in non-cog. offences. The CSI's were responsible to see that witnesses appeared in time after duly served with summons, that they were properly briefed after refreshing their memory by reference to earlier statements made by them before the police. They ensured timely and prompt payment of batta to witness. They also had to comment on the result of each case. In case the acquittal was not justified or the finding of the court perverse they moved the Dist Magistrate through SP for appropriate action. They were not Graduates in law but their handling of cases over long periods at the police station and in courts had given them thorough grasp over Cr. P.C. and Evidence Act. Some of them were very fair in approach, Inspector Manikar Pani, P.I. at Sambalpur was such a public prosecutor. In one Jail appeal from a convict before the Addl. Dist. Magistrate against the conviction by a second class Magistrate he thundered startling the Court and the pleaders present, "The first mistake in the case was committed by the Investigating officer who on inadequate evidence submitted the charge sheet. The second mistake was committed by the Magistrate who on the basis of inadmissible evidence on

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irrelevant matter convicted the accused. I refuse to support such a weak conviction only to commit the third mistake" Everybody was stunned. The SP who knew and appreciated his fairness, commented that in a Jail appeal he could have remained silent leaving it to the appellate court to judge the conviction on merits but Sri Pani emphasized his dictates of conscience. The Law Commission in its 14th report had commented on the limitation of a Police prosecutor. It is obvious that by the very fact of their being member of the police force and the nature of the duties they have to discharge in bringing a case to court it is not possible for them to exhibit that degree of detachment which is necessary in a prosecutor. Inspector Manikar Pani was no doubt an exception. The prevailing belief among the police prosecutor was that their promotion depended upon the percentage of conviction they obtained in courts. This goaded them to conduct prosecution enthusiastically and successfully and very often fairly. The system was given a go bye with the introduction of new Cr. P.C. The advocate-public Prosecutors do not, as is the public opinion, take any interest to conduct prosecutions successfully far less fairly. Only future would vindicate the ex-Chief Minister Orissa who emphatically desires to scrap Sec. 25 Cr. P.C. expressing his resentment over the working of Public Prosecutors.

Honesty is praised but starves

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- *Judge Jeffries, of notorious memory, pointing with his cane to a man who was about to be tried, said " "There is a rogue at the end of my cane."*
- *The man to whom he pointed, looking at him, said: "At which end, my Lord ?"*

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CHAPTER II

FOIBLE OF A WISEACRE

A little inaccuracy sometimes saves tons of Explanation - ***H.H.Munro (1870-1916)***

I received this circular issued by a District Magistrate in August, 1950. Office of Deputy Commissioner, Sambalpur. No. 12738 (35) Dated the 28th August, 1950.

To

The Sub-Divisional Magistrate,
Sadar/Bargarh/Deogarh/Kuchinda/Rairakhol.

It has been noticed during the last few months that instances are increasing where cases have been dealt with irregularly in either the cases having to be quashed or the accused to be acquitted. Recently in a case a Magistrate held Court after court hours without the consent of the parties and that at the place which was not public and there by behaved in a fashion which did not become a court. This has led to proceedings being threaten by the parties aggrieved which might have led to the Magistrate possibly losing his magisterial powers. I must make it clear in case there is any magistrate in this district who is labouring under any misconception that those magistrates who do not strictly adhere to legal procedure and behave in any way unbecoming a Court, I shall not hesitate to hand over that magistrate not only to the High Court for action but to Government for withdrawal of his magisterial powers.

The procedure is clearly laid in the Criminal Procedure Code and the various orders of the Hon'ble High Court. Every Sub-Division should be having copies of these orders. Besides these common sense would dictate what should be done and what should not be done by a Magistrate. It is very improper for a Magistrate to hold irregular trials and to threaten contempt of

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court proceedings with any party aggrieved who resents the irregular trial. Magistrate should realizé that they are not prosecutors and leave that function to the prosecuting staff. Besides Court procedure, I shall impress on all the Magistrates to learn to be courteous in courts. The various High Courts have very clearly laid down what will constitute contempt of Court and the Magistrates will do well to get know these provisions and not to resort to excess.

Sd/-
K.S. Raghupathi
Deputy Commissioner, Sambalpur

A. C. Mohanty,
A.D.M. Sambalpur

The background of the circular needs description. Raisaheb Dolgobind Mohanty was a direct recruit from the Bar as Stipendiary Magistrate during the second World War in 1945 to try cases triable exclusively by First class Magistrates at Cuttack. Later he was absorbed as Deputy Magistrate in 1947 and was posted to Sambalpur. As an ex-pleader of Kendrapara he was very close to Chief Justice B.K. Ray formerly Advocate General of Orissa. During his first visit to Sambalpur the C.J. had sent for Raisaheb and had very friendly discussion with him to suggest how congestion in the files of Magistrates could be removed and the litigant public benefited at the least cost. The idea of holding mobile courts in Orissa originated at Sambalpur in 1949 when Police-Magistracy meting was first sponsored with Rai Bahadur Durga Ch. Das, I.A.S. as District Magistrate and RaiSaheb Sripati Nanda, I.P.S. as Superintendent of Police. Because of construction work at Hirakud the vehicular traffic at Sambalpur had increased by leaps and bounds. The vehicles did not have the restriction as to road permit and plied over roads that did not have the requisite strength to bear the load. The Dist. Board roads and bridges were damaged. The District Magistrate was moved by the Chairman. He ordered mobile courts to be held to check such unlawful traffic. Raisaheb Mohanty headed the Court. As his file was heavy, he held mobile court only on nonworking days or after Court hours. In one of his camp courts a vehicle belonging to CWINC (Central Waterways Irrigation Navigation Commission) was detected plying on a road without road permit. The concerned Executive Engineer accused the Magistrate of harassment. Cognizance of the offence had been taken. As the accused claimed to be tried, the case was posted to another date and the accused driver was directed to appear in Court on that date after he was let off on his P.R. bond. The District Magistrate concerned was approached by the CWINC authorities

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to help. He asked the Sub-Divisional Magistrate to withdraw the case to his own file and dispose it of in the manner he pleased. The S.D.O. agreed. As the Magistrate or his Bench clerk was not readily available the lock put on the records almirah was broken open. The case records were taken out, withdrawn to the file of the SDM and the case disposed off on the same date on the appearance of the accused, pleading that it was a private road. The SDM had not taken congnizance of the offence himself, Raisaheb Mohanty had. There was no transfer petition moved by any person to transfer the case from Shri Mohanty to another Magistrate alleging motive or bias to the Magistrate in **Seison** of the case. As a seasoned pleader and Magistrate Raisaheb took exception to it. He started for Cuttack floating a rumor that he was going to contact the C.J. privately to initiate contempt proceedings against the D.M., whose predecessor had been made to suffer a contempt proceedings standing in the dock of the High Court for having delayed the release of one Jugal Kishore Pansari of Bolangir, an activist then in the Eastern States Union movement. This unnerved the D.M. He expressed regrets unconditionally to Raisaheb and bought peace. But it left a bitter taste with him. He was afraid that other Magistrates may emulate RaiSaheb threaten the D.M. with contempt and make his life miserable. The circular was the product of such a disturbed mind of an ignorant Dist. Magistrate who was fighting shy even to consult his senior colleague or the Government Pleader in the matter. Rama Ch. Choudhry an Ex Madras officer and a colleague of mine posted at Deogarh unable to understand implications of circular issued by him had reportedly told him "My position sir does not allow me to argue with you but if it ever came to a choice of weapon I would choose grammar" Do not get alarmed at the awful grammatical mistake and the syntax. The District Magistrate was one of the first batch of I.A.S. recruits thrust on Orissa as allottees of the year 1948 on the formation of I.A.S. cadre as if persons of similar attainments were not available in State Service. An Engineer by profession, on the outbreak of war he had joined war service.

A few words about Shri Mohanty, Raisaheb D.G. Mohanty is still remembered as a martyr in Orissa Administrative Service. He was brutally murdered at village Paratara in Angul Sub-division on the 29th August, 1951 in course of a local inspection while he was posted as Second Officer and Magistrate 1st Class at Angul. There is a big irrigation tank known as Katabandha in the village Paratara. There were old outstanding disputes between the villagers of Paratara and Kusasingha. On that fateful day Shri Mohanty had been to the village to allow use of water to the disputants in accordance with the decision of the Courts and Board of Revenue. As

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described by Narasimham J in the High Court Judgement reported in AIR 1952 CUTT 223 PRANABANDHU MISHRA AND OTHERS VRS. STATE this is what happened. "The Paratara mob were watching the whole incident from a place near the Thankurani pidha and on noticing that the choukidar was still alive they rushed towards him saying that he should be finished. Then the second officer interposed, entreated them not to create further trouble and promised to settle all their dispute once for all. But his interposition to save the poor Choukidar from certain death had the result of diverting the mob fury on him. Immediately he was surrounded and mercilessly belabored with deadly weapons and beaten after he had fallen down. His body was then dragged and thrown just below the southern sluice where there was about 6' of water. The Paratara mob then dispersed from the spot" The principal accused Pranabandhu Mishra had been convicted & sentenced to death in the Sessions Court. He was ably defended in the High Court by Mr. Jayaram Ayyar of Madras High Court., one of the foremost criminal lawyers of the Country at the time. But the conviction was upheld.

Now more about our District Magistrate. The first posting of this D.M in Orissa was at Bargarh as S.D.O There a local officer was transferred. He had to transport his personal effects by truck to the new station, outside the district. The owner of the transport vehicle needed an inter-district road permit. The S.D.O Sadar, Sambalpur in those days used to function as the ex-officio secretary of the R.T.A. and in that capacity used to grant road permit. This I.A.S. Officer considered himself superior to a provincial Civil Service Officer who was then the S.D.O., Sadar and assumed that he had concurrent power with S.D.O. Sadar to issue the permit. He issued one inspite of protest by his subordinates. The District Magistrate, Rai-Bahadur Durga Charan Das had to regularize the permit by issuing a fresh one in the prescribed manner on the cancellation of the earlier one.

On another occasion a local dealer of Sohella who used to sell bicycles filed a petition against the Tahsildar, Padmpur alleging that he had promised to sell a Green Model Raleigh cycle to the Officer and on the date of occurrence while he had got a new Raleigh bicycle Tahsildar had come to him, had enquired about the price and had taken away the cycle throwing the price of the cycle including the sales tax at his face. Anxious to dispense ready justice as Sub-Divisional Magistrate promptly he took cognizance of the offence of theft against the Tahsildar M.L.N. Sharma (no person had been named in the petition) examined two witnesses produced by the complainant Cycle dealer, considered their evidence on oath and acquitted the Tahsildar. In those days the Cr. P.C. as it stood did not permit examination of witness at the time of taking cognizance. He sent the case records to the

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District Magistrate for confirmation. The earlier incident of irregular issue of a road permit had convinced him that the District Magistrate can confirm or regularize any order that he might have passed inadvertently. The District Magistrate, a diehard bureaucrat of 35 years experience wrote him a D.O. letter advising him to profitably go through the provisions of the Cr. P.C. while he worked as the Sub-Divisional Magistrate. But the SDO had little patience to read law and before he could find any opportunity to read Cr. P.C. on 15.6.50 he was posted as District Magistrate, Sambalpur after a short stint of a few months in the Secretariat on transfer from Bargarh.

The circular letter first reproduced is a gem of a letter for its literary value and elucidation of law. It enlightens the ignorant subordinates that the law has been laid down by the High Court. Law is also found in different Acts. Magistrates should read it and act upon it. It is for the District Magistrate to tell them to obey it or observe it. It is said poor English in an I.C.S. Officer's note or draft invited ridicule and rebuke. The circular could have been termed in mildest phraseology as muddled by anybody acquainted with legal practice and procedure but not by this IAS, Dist Magistrate. He was not prepared to brook any dissent. The Addl. District Magistrate late Adwaita Charan Mohanty later Collector, Mayurbhanj advised him to change it and not to expose himself to ridicule. His advice was frowned upon. At last Sri Mohanty signed the circular to issue but indicated in it deviating from established time honoured office procedure that he was not the author. It was issued accordingly.

Had such a circular been issued by even a Junior Member of the State Service in charge of a Sub-Divisional he would have eaten the humble pie but for this IAS D.M. it did not create a ripple. His father-in-law was then the Central Minister of Agriculture propagating Vana Mahotsaves. The Divisional Commissioner of Sambalpur conscious of it chose discretion as the better part of valour.

Thirty years later with a long spell at the centre he retired as Member Board of Revenue, Orissa.

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- *Judge Jefferies, reprimanding a criminal, called him a scoundrel. The prisoner hotly retorted "Sir, I am not as big a scoundrel as your honour." Here the culprit stopped to look at the apologetic Judge, but hurriedly added" takes me to be." "Put your words close together" muttered the Judge.*

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CHAPTER III

OVERRULED DECISION AND UNDERDOG

> *The hungry judges soon the sentence sign*
> *And wretches hang that jurymen may dine*
> ***Alexandar Pope (1688-1744)*** .

Offences under Cattle Trespass Act are very common in rural Orissa. Sec.20 of the Cattle Trespass Act, 1871 says that if a person's cattle had been seized in contravention of the provisions of the Act he may within ten days from the date of seizure make a complaint either to the Magistrate of the District or to any Magistrate authorized to receive and try charges without reference to the Magistrate of the district. It was held in an old decision of Calcutta High Court of the year 1896(ILR 23 Cal. 442 overruled in ILR 34 Cal. 926) that a special authorization would be necessary before any Magistrate other than a District Magistrate can try a case under Section 20 of Cattle Trespass Act. Later the definition of offence in Sec. 4 (P) of 1898 Cr. P.C. included an act in respect of which a complaint may be made u/s 20 of Cattle Trespass Act. By virtue of Sec. 190 every Sub-Divisional Magistrate had the power to take cognizance of any offence and u/s 192 he could transfer the case to a subordinate Magistrate for trial.

In the year 1955 a case under Section-20 of Cattle Trespass Act was transferred by the Sub-Divisional Magistrate Anandpur to D.P. Sharma, Munisif Magistrate for trial. But Sri Sharma returned the case records to the S.D.M. observing that in view of the decision of the High Court in the case of Padma Ch. Behera vrs. Rangadhar Das, ILR 1950 Cutt 49 he had no jurisdiction to try the case. Thereupon the SDM sent it back to him with the following note.

"The relevant ruling reported in ILR 1950 Cutt 149 is seen. Attention of the trying Court is drawn to the communication from the Board Revenue in their Letter No. 351 (6) Gen 11/29-55, Dt. 19.1.55 forwarded by the ADM

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Keonjhar in his Memo No. 1904 (3) Dtd. 8.2.55 in which the opinion of the Legal Remember is given.

It is evident from the instruction that no special authorization is necessary to empower Magistrate to take cognizance under section 20 of the Cattle Trespass Act. As such the transfer of the case does not appear to be irregular. If the matter is challenged it is open to the parties concerned to proceed according to law " I therefore do not see any reason for the withdrawal of the case. The hearing may continue" On receipt of this note the Munsif Mgistrate thought that there was some conflict between the principle laid down in the High Court decision and the instruction given by the Board of Revenue. So he referred the matter to the High Court u/s 432 Cr. P.C. In their decision reported in AIR 1959 Orissa observed that though a reference was not maintainable they still held the earlier decision of the High Court in 1951 in Padma Ch. Behera case as not correct and that the principle laid down in that case no longer good law. The SDM, Anandapur was justified in transferring the case to the Munsif Magistrate. But they were constrained to point out that the language used by the Under Secretary to the Board of Revenue, Sambalpur (Sri Dibakar Satapathy) in his circular letter No. 351 dt. 19.1.55 to all District Magistrates of the Division is highly improper and may prima facie amount to Contempt of the Court. In the circular the Under Secretary had referred to the confusion created by the Orissa High Court decision. In the present case the High Court held that presumably the Under Secretary had in his letter borrowed the language from the noting of the Legal Rememberancer. "Though noting in the Secretariat files may be confidential, once copies of such notings are taken out and circulated they cease to be confidential and any remarks therein which are prima facie derogatory to the dignity of the Court may amount to contempt" they observed. The Court directed to issue notice to D. Satpathy, Under Secretary and Sri Gopabandhu Misra Legal Remembrancer to show cause why they should not be committed for contempt for the language used by the Under Secretary in the circular and the LR in his notings dated 24.11.54. The Court had held that there was no confusion. The decision may be right or wrong but it is clear and unambiguous. There has been no subsequent decision of the court either of a single Judge or of a Division Bench till now to the contrary. All persons within the State of Orissa are bound to follow the decision of court until they are subsequently overruled either by a large Bench of this Court or by a decision of the Supreme court or by an Enactment passed by the Legislature. Along with the circular letter the Under Secretary Sri. D.Satpathy had endorsed copies of opinion given by the LR Sri. Gopabandhu Mishra to the Advocate General Sri. B. Mohapatra

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in which the single bench decision of the High Court had been commented upon. Extract of the letter circulated by Sri. D. Satpathy Under Secretary, Bd of Rev. read as below

"I am directed to enclose copies of opinions of the Legal Rememberancer and the Advocate General and to say that the Law Department are of opinion that no special authorisation is necessary to empower Magistrate to take cognizance under Sec. 20 of the Cattle Trespass Act. This may be followed until the matter is carried to the High Court in some case so that the confusion created by the Orissa High Court reported in AIR 1951 Orissa 40 might for ever set at rest. "

As directed by the High Court, Contempt of Court proceedings were initiated against the Under Secretary to Board and Legal Remembrancer. After hearing , the LR was let off since his professional advice to the client, the Board of Revenue was protected. The Under Secretary was found guilty of contempt of court and was required to pay the cost of the proceedings. The fact that he had acted under the order of the Member and had only circulated the instruction of the Board to all district and Subdivisional Magistartes , was not agitated . An appeal to the Supreme Court against the conviction was rejected. But, earlier some Magistrates like us, who had followed the instruction of the Board in preference to the decision of the High Court which appeared to us as court's inadvertence escaped the wrath of the High Court.

Mr. B. Sivaraman was the Member at the time. In his autobiography **'BITTER SWEET'** he explained the matter as below justifying his role.

" Strange as it may seem, when I was at Sambalpur in a revision application brought before a Single Judge in the High Court, a clever lawyer brought up the old judgement of the Privy Council and got his client set free. Evidently, there was nobody to tell the court the law of the land. If it was merely a matter of a person getting free unfairly, it was none of my business to interfere. As Commissioner, I was responsible for seeing the justice was being fairly handled.The greater prblem was that once a High Court states a Principle of Criminal Law, it binds all the courts under it, whatever may be the statutory law on the subject.Cattle trespasses would no more be an offence till the judgement was corrected by a competent court.

I consulted the Legal Rememberancer and he advised that when another case was decided in the lower courts, he could agitate the matter in the High Court and get the law established. Under my instruction, my Under Secretary, sent a circular to all the Collectors under my supervision to act

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accordingly. I did not presonally check the circular issued by the Under Secretary. I was under the impression that the circular reflected the position that I wanted to take on the advice of the Legal Remembrencer. Unfortunately the Under Secretary appears to have taken different line in the circular he issued. He told the Collectors that the High Court judgement was bad in law and should be overlooked in the Lower Court in tackling similar cases. The Collectors naturally forwarded the circulars to all the lower courts under their jurisdiction. The matter came to the notice of the High Court in some other case from the lower courts.They called upon the Secretary and the Legal Remembrancer to show cause why they should not be hauled up for contempt of court. When I heard about the matter, I did not look at the circular, but assuming that there was no comtempt involved in the instructions I had given and the circular reflected my line, took orders to defend the case in the High Court. A good lawyer was engaged. The lawyer at once saw the gravity of the offence and advised his client to plead guilty and ask for mercy. The court accepted the plea, found him guilty, but let him off with an admonition and orders to pay costs. The Legal Remembrancer was let off because his advice was sound in law and the court could not find any fault. Even then I did not look at the papers but went away with the idea that as the Legal Remembrancer was let off, my appreciation of the law was sound and the Under Secretary was hasty in pleading guilty The case was taken up in the Supreme Court and rightly dismissed there. Long after, looking through the judgement of the High Court while finalising this chapter, I am rather ashamed that the trouble was not nipped at the bud, the circular withdrawn and error pleaded. I should have been more alert and called for the papers. In all this confusion, the judgement of the High Court stood, till it could be revised in a similar case by a Bench."

> "The purest treasure mortal times afford is spotless reputation, that away Men are but gilded loam or painted clays.
>
> **- Shakespeare**

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- *Chief Justice Fuller was practising before Judge Mac Arthur of the Supreme Court in Illinois in Chicago. In his speech before the judge he pleaded his client's ignorance of an offence he had committed. The judge said, " Every man is supposed to know the law, Mr. Fuller."*
- *" I am aware of that", responded Mr. Fuller. " Every shoe-maker, tailor, mechanic, and illiterate labourer is presumed to know the law. Yes, every man is presumed to know it, except the Judges of the Supreme Court, and we have a Court of Appeals to correct their mistakes.*

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CHAPTER - IV

HURT BY MISTAKE OR HASTE ?

Some rise by sin, some by virtue fall **- William Shakespeare**

Mr. Balaram Sivaraman. B.A(Hons), Madras I.C.S born on the 10th January, 1912 commenced service on the 11th Oct,1934. A considerable part of his career was spent in Orissa where long after his retirement as Cabinet Secy. in 1970, he came back as Dy. ChairmanState Planning Board in 1991 under the Janata Govt. of Biju Patnaik shortly before his death in 1992. In recognition of his contribution to the cause of agriculture in Orissa as Development Commissioner, later as Secretary in the Ministry of Agriculture Government of India, Vice Chairman, Agriculture Commission, Member Planning Commission in-charge-of Agriculture, the Orissa University of Agriculture and Technology, Bhubaneswar conferred an Honorary Doctorate (D. Sc) on him in the year 1986. He like the Viceroys of the olden days reigned and ruled Orissa as the top bureaucrat. Wherever he was, he bacame the centre of authority.

He earned considerable fame (or notority) by newspaper headlines in 1938 in the famous New Orissa Defamation case (C.C. No. 19/38) at Berhampur (GM) where he was the Joint Magistrate and Sub-collector. The case arose on the complaint dated 4.3.1938 of Rao Saheb Anantram Ratho,the District Magistrate,Ganjam and Mr. Sashibhushan Ratho, Editor, New Orissa was the accused. The alleged offence of defamation u/s 500 I.P.C arose out of an article in the New Orissa, the only English daily of Orissa dated 2nd Feb1938 regarding the appointment of Sri. Uma Charan Patnaik as Public Prosecutor in preference to others notably Sri. Lingaraj Panigrahi, later the Chief Justice of Orissa High Court the Minister of Education and Home and the Speaker, Orissa Legislative Assembly. Sri. Uma Charan Patnaik earned considerable fame as a Parliamentarian at Delhi where he had specialized in Defence Matters and was heard with respect by successive Defence Ministers. In the editorial there had been attributed to the District Magistrate a motive for the appointment of Sri.

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Patnaik, close to Govt., as Sri, Ratho was given extension of service later. He was the first Oriya Collector and the D.M of Ganjam. The Criminal case no. c.c.19/38 was ordinarily to be tried by Sri. Dayanidhi Patnaik, Magistrate 1st class but Sri. Sivaraman got it transferred to his file and tried it himself as Joint Magistrate although ordinarily he was trying cases of agency area and this case related to plain area of the sub-division. Sri. Lingaraj Panigrahi defended the accused Sashibhushan. In his judgement dated 28.11.38 Mr. Sivaraman while acquitting the accused observed on the complaint of his District Magistrate as follows" Only sheer incompetency can produce letters like Ex. G & 7 when all that was to be expressed was what the complainant says he wanted to express. I do not suppose the complainant became a District Magistrate because of his incompetency" The acquittal order was set aside later by Haris C.J. and Noor J. of Patna High Court who heard the Government apeal no.2/1939 against his acquittal and fined the accused Rs. 100/-. In his memoirs BITTER SWEET published under the auspices of Center for Policy Research, New Delhi Sivaraman refers to the case. He narrates that on the request of Dayanidhi Patnaik he had obliged him to try the case, blissfully unaware of all intricacies of Orissa Politics. The Bench that had heard the appeal had held that the editor had overstepped the limits of fair reporting. He also admits to have learnt from his mole in Secretariat one Raghavan, then stenographer to the Law Secretary, that the Govt. contemplated to take disciplinary action against him for the wrongful acquittal. The Law Secretary Govindan Nair had recommended it. As the officer was acting under judicial authority, the Chief Secretary M.K.Vellodi, I.C.S had disagreed. He wanted to consult the Chief Justice Sir A.T.Harris who advised that though the judgement was set aside it did not mean that it was perverse or malicious. Sivaraman was aware that motive had been wrongly attributed to him for the acquttal by the Cabinet. He was saved of the ignominy through the judicious view taken by the British Chief Justice, Raghavan quid pro quo was promoted as Under Secretary when Sivaraman became the Chief Secretary. He mentions that after this incident he became a painstaking judge carefully scrutinizing evidence and law so as not to hurt anybody by mistake or haste. A reference to this case was made by the Samaja, the premier Oriya daily in its editorial on the 17th May,1965 discussing Sivaraman's role in Orissa on the eve of his departure. It was expected that Sivaraman would encourage similar judicial uprightness as he had demonstrated (assuming that it was not born out of personal animosity) but his subsequent approach belied it. He had double standards in later years as facts below would establish.

In the early fifties, the three member board of Rev. Orissa had one member posted at Sambalpur substituting the Commissioner, Northern Division and he was designated as Member (Commercial taxes). In his

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capacity as Registrar of Companies Sivaraman was the complainant in a criminal case against a rice mill owner for not submitting the prescribed returns. Iwas the trying Magistrate 1st class at Titlagarh in Bolangir district. The accused owned a defunct rice mill at Titlagarh. He used to reside in Calcutta. He was being defended by a local pleader Sri Balakrushna Behera who was later elevated to the bench of Orissa High Court. The case ended in conviction of the accused on his plea of giulty. The sentence of fine was most probably considered inadequate by the Member. He called for the case records from me, the trying Magistrate Part III, Chap. VI of Orissa High Court General Rules 'and Circular Orders Criminal Vol.1, (1949 Edition) regulated 'custody and examination of and requisition for access to and transmission of records from one court to another' Rule 48 thereof read "The records of decided cases shall be retained in the record rooms of the courts to which they appertain or of the superior court of the district, and shall not be alllowed to pass out of the custody of the officers of such courts, except when called for by superior Judicial Authority or required for the purposes of order XIII, rule 10 of the code of civil procedure by a civil court. It is improper and inconvenient that records of the courts of Justice should be sent to other public officers or functionaries. If a reference to their contents is required the proper procedure is ordinarily to obtain copies of the requisite papers" This did not permit the transmission of records to the Member, who was not a judicial authority. Much against the advice of senior members of the service, I pointed out to the Member that the rule quoted above did not premit me to transmit the records to him. He went through the provisions carefully but discreetly kept quiet. In his office, he promptly moved the High Court for the amendment of the rule 48. He ensured that the rule was amended with the provision - "Note: This rule shall not however apply to Members Bd. of Rev. " The same requisition for records was repeated to me, the Magistrate conceerned, enclosing the latest corection slip to GRCO (No.5 dated the 18th Dec, 1952). The records duly reached him. Probably Mr. Sivaraman could not reconcile himself to the judicial independence exhibited by a Junoir State Service Officer which he had once shown. He waited for an oppurtinity to finish this small fry.

It arose out of my conduct at Titlagarh in the ex-princely state of Patna that merged with Orissa on 1st Jan 1948.The integration though complete constitutionally and politically was unpopular and discontinuance of the access to the highest of authorities who could readily mete out justice contributed in no small measure to the unpopularity of the administration.Housed in shabby dilapidated court room, surrounded by the noisy babble of litigants amidst dust and flies, dirty floors, broken chairs and tables, torn and soiled table cloth, out of date and inadequate library, I could not afford to dose over countless purposeless files, products of Parkinson's

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law in operation. Dosing would have rewarded me better. My friends who did, earned rich dividends through the Member. The debates in the constituent assembly were fresh in my mind. It was an exhilerating experience to watch a police state transforming itself to a Development state specially when one had both police functions and responsibilities in implementing and acheiving progress under Five year plan. The job I had was such an unenviable task. The direction of the constitution to separate executive function from the judiciary had not been implemented and the same officer who guided police investigation tried the accused in court. To one imbibed with Montesque's Theory of Separation of Power, it was surely unpleasent. My senior colleague late G.S.Behera (God bless his soul) with his maxim 'A boss can do no wrong 'had seen long service in another princely state of Gangpur functioning in such varied capacities as Controller of Distillation and Royal household (which was a dignified name for the one who supplied liquor to the Palace and managed the Royal kitchens) to Collector of Income tax and District Magistrate. In the latter capacity, pleaders not necessarily graduates in law sometimes appeared in his court. It was customary for him to be on his leg at the dais of the presiding officer in case the pleader - dignitary had the privilege to share the same bed or bottle with His Highness - Ruling Chief.

For the tradition in some of the princely states this was nothing uncommon. The chief Justice of one state was directed to sing Dahuka songs (obscene songs uttered in the presence of the assembled crowd as the car was being pulled in the car festival) and he had obliged. Another Chief Justice of a State was asked to dance like a monkey after dinner by His Highness. Ungrudgingly, he had obeyed the dictate. Dr. Kalindi Charan Panigrahi, who had experience of service in native states has corroborated in his autobiograbhy (ଯାହା ଅଙ୍ଗେ ଲିଭାଇଛି, Page 471). The ruling Chiefs themselves had their perfomance. Purna Chandra Oriya Bhasha Kosho, the Oriya Lexicon mentions that the Raja of Rairakhol, when summoned to appear before the Raja of Sambalpur, used to be present attired in ladies dress. The rulers as such had no finer susceptibility to respect the sentiments of their employees.

The District Supdt. Of Police, a crafty wiseacre, in the confidence of the District magistrate took full advantage of Behera's weakness by coaxing, cajoling and browbeating him. The S.P was a drunkard whose free supply of liquor used to come from a mine owner. The mine owner fell out with a forest contractor. The latter perhaps was right and could not be cornered in the straight path of the law, logic and conscience. The S.P whose free supply of drink depended on the goodwill of the said mine owner conspired to drop a stolen piece of Railway stores into the open yard of the Forest contractor and recoverd it in couse of an investigation into the case registered for theft of Railway Property. The arrangement was that the recovery should be made

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and the culprit arrested after court hours to ensure his humiliation and to eliminate any chance of his rushing to court to get a bail order. It was faultlessly executed on 16/03/53. The S.P had instructed my senior colleague to refuse bail and no sooner than he came to know that the culprit had been arrested, he made himself scarce. i was the second in command to face the music. Unfortunately for the prosecution, the ADM functioning as Disstrict Magistrate had earlier issued a circualr order on 3rd Oct, 1951 on disposal of bail application. I quote it in full to appreciate the sentiment behind it.

"The Registrar High Court of Orissa remarks that in a small percentage of cases there has been unusual delay in the disposal of bail applications. As it is a matter concerning human liberty, all bail applications should be disposed off as quickly as possible.The Magistrates should see that bail applications are disposed off immedietly without unnecesary delay" Before he came to Administeration through Emergency Recruitment the concerned ADM Sri. S.S.Murty was a lawyer and his vision had been conditioned accordingly. The bail petition was moved by a pleader Sri. D.Hota who subsequently rose high, not only in profession but also in state Judiciary as Registrar High Court, Legal Remembrancer and Law Secretary. It was moved at about 5 P.M.. Offices then used to close at 4 P.M. but the banking treasury work often, detained me in office beyond 5 P.M.. The pleader was told to search out the senior Magistrate in town. A thorough search was made which revealed the presence of SDO in a jeep about 10 km outside the Town. We waited for his return till 10 P.M. The pleader was vociferous as to police motive in late hour arrest or detention. The purpose of moving bail petition would have been lost had it not been taken up then and there. The circular of D.M. was known to the Bar. I waited till 10.30 P.M. Anticipatory bail was then not as common as it is now. To acquire jurisdiction the law required the Magistrate to be told if the accused had been arrested or detained without warrant. The accused could be produced or appear before him. Appearance meant appearance through pleader. The law and more particularly the discussion on Fundamental Rights weighed heavily with me to order release of the accused (who had not, been told that he had been arrested and so probably detained without a warrant)on bail to appear in court on the day following. The time 10.30 P.M. was penned in bold letters to indicate the anxiety of the Magistrate to do justice even at late hours at night. Next day my senior colleague the S.D.M. took up the case, heard parties and released the accused again on bail on the same terms as I had given. The incident was reported to the Dist. Magistrate by the S.P. He asked for my explanation as to how the accused had been released on bail when he had not allegedly been arrested or produced before me. The relevant provision of law and the District Office circular when pointed out to him convinced him that there was no irregularity or illegality committed. The incident was clean forgotten.

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But lo and behold ! About 15 months later while I was on the verge of my promotion I was served with a chargesheet on 27th June, 1954 and placed under suspension. The charge was that as Magistrate I had committed certain serious illegalities by releasing an offender on bail and by action without jurisdiction. I reproduce the charge.

"At 10.30 P.M. on 16.3.1953 Pleader Sri D.Hota presented a petition to you at your residence praying for the enlargement of the accused, you acceded to the prayer and passed order in the following terms."

'The accused if arrested be released on bail of Rs.500/- with one surety to appear in court tomorrow when order would be passed with reference to papers available.'

Your order clearly indicated that you were not sure of the fact of the arrest of the accused. It was illegal in your part to assume jurisdiction at that stage to pass the conditional order when you did not even know whether the man had been arrested and what the case was.

2. When the Sub-Divisional Magistrate is at Headquarters the convention is that he deals with bail matters unless the case has been transferred to any other court. You had no intimation that the S.D.M. was out on tour which intimation he gave you each time he went out on tour. You granted bail on a Monday night and you are aware that the S.D.M was in Office that day and that he had cases posted on the morrow next day (Tuesday) because you know that the S.D.M. tries cases on Tuesday and Thursdays. Again PM Rule 306 (a) provides that orders granting bail in a non-bailable case (the bail petition before you indicated that the case in question is a non-bailable case) shall not be passed by a Magistrate until the Court Officer or the Prosecuting Inspector has been heard. You , therefore, passed the order enlarging the person on bail in violation of PM Rule 306 (A). You have, therefore, passed a conditional order which was primafacie without jurisdiction and without giving the opposite party a hearing they are normally entitled to."

B.Sivaraman
Additional Secretary to Government. 19.4.54

The accuser was the same Sivaraman who had shown exemplary judicial independence by acquitting the Editor in New Orissa Defamation case with a stricture on the complainant, his District Magistrate. Was it ignorance of law or sheer vindictiveness ?

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Earlier on hearing whispers that the Member was after my blood for not obliging him in sending the records and this afforded an opportunity to settle scores I had taken action under the Legal Practitioners Act 1879 against the pleader for snatching an order from me while the S.D.M. was present at Headquarters. The proceedings had ended in the joint finding of both the District Magistrate and the District Judge that when I assumed jurisdiction the S.D.M was not present. Recorded evidence had led to that unavoidable conclusion. It would have been clear to the meanest intelligence that the charge against me was not only frivolous, unwarranted and possibly high-handed but it smacked of contempt of court, since the propriety of the judicial order was never challenged before any superior judicial authority. Sivaraman had escaped disciplinary action and humiliation through the intervention of the advice of the Chief Justice. But the order to suspend me was passed against the advice tendered by the Legal Remembrancer Gopabandhu Mishra on 10th Aug. 1953 to the effect that the Magistrate does not render himself liable for disciplinary action. In his case he had escaped indignity when the Chief Justice had said the same thing. The suspension not only stunned me but the intelligentsia of the State and the Bar. I would have been convinced of the propriety of the action including suspension had I been accused of dishonesty, lack of integrity or some such failing while passing the impugned order. My request to indicate if I had any such deficiency while passing the impugned order had proved infructuous. I explained within seven days the legality and the propriety of the order and its invulnerability to challenge by Departmental action. I produced the note from the S.D.M to me to indicate that he tried cases on Tuesday and Wednesdays and not on Tuesday and Thursday as mentioned in the chargesheet and that also he did not stick to as court diary had shown. Regarding not hearing the police the prevalent law then as laid down was that the Police Regulations cannot modify the Cr.PC, Eminent Advocates, Ex-Judges, Public men even Senior Administrators advised me to move High Court for contempt of Court. One of the earliest circulars of the Orissa High Court Gen. letter No.1 of 1949 Criminal Dt.26 April 1949 read "Any extra judicial interference whatsoever directed towards influencing the manner of disposal of pending case amounts to serious contempt of court. A Court can be approached in one way only and that is by a judicial application in proper form. Any instance of approach with reference to a pending case in any other manner must be immediately reported to the High Court."

Shortly before the High Court had convicted the Dist. magistrate, Cuttack Radha Gobind Das, I.A.S for contempt for conduct that pale into insignificance compared to the gravity in my case. But I believed that when my stand in vindicated I would be compensated. I believed with Edmund Burke that big positions and small minds go ill together. I was expecting my

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promotion which kept me in low key but not till Dec. 1955 could the proceedings be disposed of. Three batches of colleagues got promotion at my cost and only on the departure of Sivaraman I was informed that I had been exonerated. Successive entries for three years in my merit assessment indicated that I was under a cloud while there was nothing suspicious about the order. Even the exoneration did not find mention in the C.C.R.Next year when I qualified in the Written Test of I.A.S (SR) Exam. 1956 securing 62 per cent of marks for the viva voce this merit assessment was sent to the UPSC. No administrative officer of Orissa could enter I.A.S through this special Recruitment.This exposition would not be to the relish of his favourites and henchmen who had earned rich dividends in Orissa by meek acquiescence in his wrong and unethical dictates like a satrap but for the dispassionate judgment of posterity I record such aberration. My only regret is that I could not haul him up for contempt.

Now I ask was I hurt by mistake or haste ?
Or by design !

Better be strong and worng than weak and right.

Sir Charles Russel

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- *When Thaddeus Stevens was a young Lawyer he once had a case before a bad-tempered judge of an obscure Pennsylvania court. Under what he considered a very erroneous ruling it was decided against him thereupon he threw down his books and picked up his hat in a state of indignation, scattering imprecations all around him. The judge assumed an air of offended majesty, and asked Thaddeus Stevens if he meant to express his "contempt for this court ?" Stevens turned to him very politely made a respectful bow and feigned amazement. "Express my contempt for this court ? No sir, I am trying to conceal it, your honor," adding as he turned to leave, "but I find it damned hard to do it."*

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CHAPTER-V

UNSCRUPULOUS INTERFERENCE

> *Laws grind the poor and rich men rule the law.*
> **Oliver Goldsmith (1728-1774)**
>
> *The Rich benefit by stay and delays;*
> *the poor perish by it;*
> *The rich thrive on deck by deck litigation; the poor fall by the roadside*
> **Justice Krishna Iyer**

there is a real apprehension that direct or indirect attempts may be made to influence the judicial discretion of the Magistrates. Apart from interference by politicians the main danger lies in the apprehension in the minds of Magistrates themselves that if they showed too much independence they may get into trouble."

Extracts from the opening speech of
CJ Narasimham
at the inaugural function of Separation of Judiciary.

I had experience of direct interference by bureaucrats and politicians both before and after the separation of Judiciary. Moreover besides my catastrophic disgrace for my independence in approach to judicial matters that I have narrated in the earlier Chapter "Hurt by mistake or haste?" I suffered occasional pinpricks at the hands of unscrupulous Additional Dist. Magistrate, who in the absence of D.M. busy in supervision of development projects exercised the ordinary powers of Dist. Magistrate under Cr.P.C and other local and special laws. I narrate some instances.

Interference by politician was few and far between. The pressure was exerted on Magistrates known to be corrupt or malleable. Probably I was not included in either category. So I was subject to indirect pressure. I

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was Magistrate 1st class at Gunupur from 1956 to 1959. I had just been released from suspension over 18 months as a result of machination by the Member (CT) Board of Revenue. On exoneration but loss of promotion I had joined at Gunupur. Late Sadashiv Tipathy was the Minister Rev. and he belonged to the district. Although he had known me a decade earlier, he had first hesitated to suspend me on the face of the advice of the Legal Remembrancer not to take disciplinary action. But had succumbed to the pressure of the Member who was the ex-officio Secretary, Rev. Deptt. On my exoneration, he a gentleman and egalitarian at heart suffered from a guilty-conscience when he met me at any social function and had given expression to it.

Padmapur is an important village in Gunupur Sub-Division then a Tehsil. It was the headquarters of a police station and a N.E.S Block. It was quite unapproachable before the construction of 132 KV Line. The Padhi's of Padmapur were proverbially rich, influential but very stingy. Their acquisition of gold bars each weighing several Vis[s] (one Vis 120/180 tolas) their extent of landed property in both agency and plain areas was topic of discussion in intellectual circles. One Baruni Padhi of Padmapur was a big rayat of Jeypore Samasthanam. On the abolition of Jeypore Zamindary he was to pay cist (revenue) to Orissa Govt. through the revenue collecting agency of R.I. and Tahsildar. As Baruni was influential crooked but parsimonious to a fault no Rev. Inspector ever approached him for payment of Govt. Land Revenue. In 1956 Sri. Pitambar Pani was the Tahsildar. He was reputed to be a strict man. He sent for the local R.I. gave him a thorough scolding for neglecting to approach big rayats for collection of land revenue and wanted positive result that month. The R.I was threatened with loss of service benefit. He was an ex-Samasthanam employee. His absorption in Rev. Deptt. had not been finalised by then. He got panicky, forgot that Baruni was an inflammable material and in the village Shandy (weekly market) asked him for payment. This hurt Baruni's pride and self esteem more so as the payment had been demanded of him in a public place giving an impression to the outsiders that he was a defaulter to the State. Softly he expressed that payment has been held up through inadvertence and that he would make full payment at his house. He told the R.I. to approach him at his residence on the day suggested next week. The R.I. agreed.

The R.I. went to Baruni on the appointed day. Earlier to that the Tahsildar had reviewed the progress of fortnightly collection of land Revenue by all R.Is.'s in the Tahsil. In that gathering Padmapur R.I had expressed that next fortnight with collection from Baruni Padhi in full he would exceed

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the target. Later on being approached at his house Baruni told the R.I. to calculate dues payable with interest. It had been done already. He was asked to prepare the receipts. It was written. The Revenue Inspector was taken to the inner court yard. Houses at Padmapur in those days were like corridor Janata Train- one room following the other. As the inner court yard Baruni took out his slippers and beat the Revenue Inspector thoroughly. His weeping and later loud cry brought no response from any quarter. Bleeding from nose and with lacerated injury all over the upper part of the body the Revenue Inspector came out. He reported the matter to the Tahsildar at his camp. A case under section 353/379 IPC was registered at the Police Station on the Tahsildar forwarding the Revenue Inspector's report for assaulting a public servant on duty and for theft. The receipts prepared by the Revenue Inspector in token of payment had been snatched away from his hands as he was being beaten. On the completion of investigation charge sheet under section 353/379 IPC was submitted by the Officer-in-charge, Padmapur Police Station against Baruni. Such a happening would have been undreamt of but for a young incorruptible police officer posted at the police Station then. Baruni was an active worker of the Congress Party then in power. He was a vote-bank himself and the Padhis of Padmapur were mostly guided by him in casting their votes and that of their field servants and family members. Baruni moved heaven and earth to avoid court attendance. A petition was filed under section 205 to dispense with his attendance and to permit him to appear through pleader. It was rejected. He had to adorn the box meant for the offender. He felt, it not only disgraced his spotless white khadi cloth but the status of the Ruling Party. The office-bearer at the Block/ District level did not however agree or sympathize. They promised to help him later in final disposal of the case. Offences were not compoundable. The District Magistrate and Superintendent of Police were approached to get the case withdrawn but both of them remained adamant in their stand. The trial proceeded. To prove the offence prosecution relied solely on circumstantial evidence and the direct testimony of only one witness, the Revenue Inspector complainant himself. Baruni's plea of alibi earlier taken was abandoned. During trial Medical Certificate had been produced and the Medical Officer examined in support of the injuries on the body of the complainant. Defence attributed is to a fall from the cycle while drunk. No defence witnesses were examined. At the time of argument the Court Sub- Inspector conducting the prosecution harped on the strong circumstantial evidence to the effect that the Revenue Inspector had been told by accused Baruni in presence of witnesses to come to his house, that witnesses in Rev. meeting had heard him to show better progress on realisation of dues from accused Baruni, that witnesses had seen him entering the house of accused Baruni and

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coming out after a short time bleeding and limping. The torn shirt with bloodstain had also been produced at the time of examination. There was the testimony of the complainant which was unimpeachable. The circumstantial evidence had led to the inevitable conclusion that the Revenue Inspector had been beaten at the house of Baruni as told by the injured.

At the time of defence argument by Sri G.V.Ramamurty Patnaik after the Court Sub-Inspector had finished for the prosecution. I cited a Patna High Court decision in the early thirties to the effect that prosecution witnesses were not to be counted but the uncorroborated testimony of a single independent witness of unimpeachable character was sufficient to warrant a conviction and requested Sri Patnaik to controvert it with any decision to the contrary. He wanted time to search for the appropriate decision. As the library at Gunupur was not adequately stocked, he wanted a week's time and I granted it not aware of the intention behind. Next day Baruni went to the Revenue Minister Sadashiv Tripathy and met him at Cuttack. He knew that Sadashiv Tripathy was M.L.A. when I was at Nowrangpur. He wanted a Sifarish from him to the Magistrate i.e. myself indicating to consider his case favourably. Sadashiv Babu knew me and had heard me openly telling that for the humiliation of suspension that I had suffered at his hands wrongfully I would repay him at the appropriate time. He refused to oblige but directed him to the District Magistrate. Fortunately for me Somonath Mishra, the District Magistrate was Secretary to Sivaraman when I had suffered the humiliation of suspension under extra- ordinary circumstances and he had respected my feelings. He pleaded helplessness before Sadashiv Tripathy, Minister Revenue, Finding no way out he sought advice from the Additional District Magistrate. The Additional District Magistrate was an ex-State Officer who had risen to the post of a Dewan from the rank of a Middle school teacher. He represented a backward community. Perhaps a firm believer in doctrine of Domestic Servant, he was convinced that a Govt. servant should possess the qualities of a domestic servant viz loyalty. He had spent 3 months out of six months of service in a Sub-Division where the Revenue Minister was a resident at the Congress Office and as such was extremely popular with the Minister, the party workers and mini leaders at Block level. For him public servant and private domestic servants should behave equally and there was no line of distinction between public administration and private management. Armed with this theory the Additional District Magistrate was very successful. He was blissfully ignorant of law or procedure but had abundant understanding of human nature and weakness of persons in authority. He advised Baruni to move a petition before him under section 528 Cr.P.C. for transfer of the case out of my court on the ground that the

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Magistrate had already expressed his opinion on the available evidence and that the accused was unlikely to get a fair trial before him. It worked. A transfer petition was moved before him. Fortunately for me my predecessor had taken action against pleader G.V.R. Patnaik under the L.P. Act for baseless allegation made against the Magistrate . Action taken against him had been upheld by the High Court. It is reported in AIR 1959 Orissa 22 Special Bench Decision GVR Patnaik vrs. Pitambar Pani. As such Ramamurty was very cautious in drafting the transfer petition. He only complained that the Patna decision had been abruptly cited by the Magistrate and it indicated that his mind was already prejudiced. In the absence of a decision cited to the contrary there was some truth in the apprehension of the accused but it could have been met without a transfer petition. A copy of the transfer petition was sent to me for comments and transmission of records. I commented that with a heavy criminal file working at the same time as Munsif, Sub-Treasury Officer, Sub - Registrar besides functioning as E.O. Notified area council I would be happy if my file is reduced by one. I knew there was no other Magistrate 1st Class there except the Tahsildar, who was a witness in the case. Transfer petition could have been disposed of on receipt of my comments. Transfer to a place outside Gunupur would have deprived Ramamurty of a good brief and would have meant heavier expenditure to accused Baruni by way of engaging a fresh pleader. The petition was allowed to remain pending till I was transferred about a year or more later. The Additional District Magistrate could thus please the Revenue Minister by his conduct. Soon after I was transferred, the case went back to the file of the successor Magistrate. Baruni was let off with a nominal fine. The pliable Additional District Magistrate with his ingratiating attitude was crowned with laurels by the Minister and he rose very high in the service though not in the estimation of the public.

In pre-separation days of judiciary from Executive there was real apprehension in the minds of Magistrates themselves who did not endear themselves to the police by resorting to acquittal in such cases where it was deserved. The apprehension was much real and annoying if the Additional District Magistrate, handling these matters was corrupt. At Bolangir it was my misfortune to get such an Additional District Magistrate. Known to be corrupt from the start when he had entered civil service completing his education on charity he had purchased a house before completing the probationary period of two years. He had taken all acquittals as unjustified if police objected to it. In case of the accused being affluent as was the case in case of offenders

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under Essential Supplies (Temporary Powers) Act corresponding to present Essential Commodities Act. he would take that heavy sum of money has changed hands and his cut would be demanded in shape of purchases at distant places like Waltair and Raipur. Any honest Magistrate resenting it would get constant pinpricks even in trivial matters. I reproduce a letter I received from him to indicate how perversely his mind worked.

Letter No..9762 Dt. 29.8.52

To,

Sri B.C.Mohanty
Magistrate 1st class,Titlagarh

In GR Case No 72/52, you sentenced the accused only to six months R.I in spite of his previous convictions and took a lenient view because of the ill health of the accused as has been observed by you in your judgment. In several cases of late, you have been found lacking in judgment in appreciating the gravity of offences and deciding the extent of punishment to be inflicted and this has already been brought to your notice. If you do not show improvement in this position it may be necessary for me to recommend for reduction of your magisterial powers. You are requested to be more careful and considerate in future.

The record of the marginally noted case sent with your No.2001, Dy. 22842 is returned herewith.

Sd/
for **District Magistrate, Bolangir**

GR Case No.72/52
State Vrs.Sukul
Ganda u/s 457/380 IPC.

No doubt the accused had previous convictions spread over years but in that case the accused Sukul Ganda, a poor Harijan who was refused employment because of his bad antecedent had broken into a house and had committed theft of eatable and a piece of wearing apparel. For the

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Additional District Magistrate, the sentence should be deterrent, for me and Magistrates with liberal outlook on social security we had taken the aim of administration of criminal justice as reformative. Hence we used to clash often. I had to forego promotion because of him since I was mostly doing judicial work at the time and the Collector with little time to devote to this work had to judge my performance through him. How correct the Chief Justice was when in the opening address he had analyzed the mind of magistrates showing too much of independence.

What a goodly outside falseshood hath.

- Shakespare

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- *A certain judge in the mining territory of Neveda had a reputation for probity. In keeping with this opinion, he opened a mining claim case one morning with the following words to the court: "Gentlemen, this court has received from the plaintiff in this case a cheque for $ 10,000. He has received from the defendant a cheque for $ 15,000. The court has returned Rs 5,000 to the defendant and will now try the case on its merits.*

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CHAPTER-VI

JUDICIARY SEPARATES

> *She took to telling the truth; she said she was forty-two and five months.*
> *If may have been pleasing to the angels but her elder sister was not gratified.*
>
> **H.H.Munro (1870-1916)**

Article 50 Part IV of the Constitution of India which deals with the Directive Principles of State policy has clearly and categorically laid down that the state shall take steps to separate the Judiciary from the Executive and the Public Services of the State. Although the general impression is that the Indian National Congress at its first session in 1885 had first advocated the separation of Judiciary from the Executive the fact is that as for back as in 1793 in Section 1 of the Bengal Land Revenue Regulation No.II of 1793, there was a direction to the Government that Revenue officers should be deprived of their judicial powers. There after on innumerable occasions Statesmen, Administrative Judges (both British and Indian) had again and again urged on the Government the need for separation. But Government had resisted it on the ground of financial difficulty. Work was light in those days and the same Revenue Officer discharged revenue, executive and judicial function which was cheap to the Exchequer. On the introduction of the new constitution, in Orissa the question of Separation of Judiciary was taken up at the instance of the Governor Sri Sayyed Fazle Ali, formerly Justice of Supreme Court. The High Court was asked to prepare a scheme for the consideration of Government. The Scheme was prepared on the model of Madras which had started it without amendment of Cr Pc and only with Executive Instruction issued by Government. Orissa Government approved the essential features of the scheme. On the 18th July, 1953 Government appointed a committee headed by Sri N.Senapati, ICS. President Boad of Revenue, Orissa with Justice R.L.Narasimhan, ICS. to prepare details dealing with the financial implications, staff, accommodation required and the allocation of functions between the Judicial and Executive

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Magistrates. That Committee moved throughout the State, saw the working of Magistrates at important stations and submitted a detailed scheme in their report to Government on the 9th October, 1953. In course of their visit to the Districts the Committee had selected some stations to judge the work load, the quality of disposal and the manner in which the separation could be effected. Orissa then consisted of 2 Revenue Divisions, Northern Division with headquaters at Sambalpur and Orissa division at Cuttack. The Committee chose 2 sub-Divisions in the Northern Division, one in regular district at Bargarh and one in the ex-State area at Titlagarh. It was then considered to be important Sub-Divisions from the volume of criminal case work. I was then posted at Titilagarh. For supervision of development work the S.D.O used to tour for at least 21 days a month. I used to discharge his functions in his absence on these days. Besides I was the Magistrate 1st Class, Sub-Treasury Officer, Sub-Registrar and designated authority under certain Revenue Acts. Even then the pendency of year-old cases was a few; thanks to the willing cooperation of the members of the Bar. Justice Narasimhan went round the court and saw the designation Second Officer and Magistrate in the name Board. He was S.D.O. at the start of his career. He used to load his Second Officer with bulk of criminal cases and when told that the practice still continued wanted to inspect records in the Court. Out of the pending cases he brought out at random four contested criminal cases and out of disposed of criminal case records consigned to the Record Room he had wanted four. These were brought before him. He took the records from Record Room to the Inspection Bungalow where he was camping for scrutiny. At the court he sat with the Magistrate in the dais and scrutinized the record with reference to relevant registers. He would take out the case number ask for the Register and see if it had been rightly entered. He would, with reference to order-sheet, check the attendance of the witness cross-check if it was first, second, third or subsequent appearance and if the batta had been paid for the detention. A single record took not less than an hour. He perhaps felt satisfied and did not look to other records brought out. But that one hour profitably utilized showed us how the record and registers were prescribed only to maintain check and balance and how cross checks had helped. I wish such an examination of a single record by an experienced Judge at each Sub-Division would be more helpful in disposal of long pending cases than tons of advice sent on paper.

Implementation of the separation scheme submitted by the Senapati Committee in 1953 was delayed for some reason or other and only in January 1960 it was decided by the Government to accept the report in its essentials subject to certain modifications regarding allocation of functions and to try it

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on an experimental basis in the three coastal districts of Cuttack, Puri and Balasore. Services of some experienced magistrates Possessing Law degrees were placed under the administrative control of the High Court and they only had the exclusive jurisdiction to try offences under the Penal Code or under Special or local Acts. Their jurisdiction commenced from the stage of taking cognizance either on police report or on private complaint and lasted fill the termination of the trial. Powers under the Preventive Sections of the CrP.C remained with the Executive Magistrate. They had also concurrent power to take cognizance under section 190 CrP.C but it was to be exercised only at times of urgency either when the Judicial Magistrate is not available or when while on tour he gets information regarding the commission of an offence which necessitates taking action on his part. Power of Magistrates to control and guide police investigation under Chapter XIV CrPC was to be exercised by Executive Magistrates mainly. But in respect of some of the powers, the Judicial Magistrates had concurrent jurisdiction as these were ancillary to the power of taking cognizance under section 190 (1) (B) Cr.P.C.

The Separation Scheme was introduced on the 1st May 1960. On 25.10.61 it was extended to Districts of Sambalpur and Ganjam and later to the whole of the State. I had the privilege to work as the first SubDivisional Magistrate of Bhadrak after attending inaugural ceremony at the High Court premises. It was attended by the Governor Sri Y.N. Sukthankar who inaugurated the Scheme after the opening speech of the Chief Justice Sri R.L.Narasimhan. Dr. Hare Krushna Mahtab, Chief Minister also addressed it. The Governor once of the ICS and a very learned scholar by his own right in his address had said;

"A democratic Government can only function justly and equitably provided the Rule of Law prevails throughout the State and is honoured by every one. In other words no matter what a man's position is, he must be amenable to law and its procedure no more and no less than the humblest individual in that State. This can be secured only if the judiciary is free and independent and the public and the parties who appear in Court do not have a shadow of doubt about the independence of the Court. This, however, does not mean that the courts should not be fully aware of normal life and its difficulties or should demand a standard of proof in criminal cases even higher than that required by law. Acquittal of the accused in cases which richly deserve convection would give a great shock to the law abiding public apart from any encouragement that it might give to the lawbreakers. As the Law Commission has rightly pointed out, while it is necessary that Magistrates

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should be independent of the control of the Executive, they should at the same time be made aware of the difficulties of the Executive in dealing with the matters which come before them and the procedure adopted by the police in the investigation of the cases. Independence of the control of the Executive does not mean looking askance at the Executive or having a tendency to add to the difficulties of the Executive. The Law Commission has, therefore, rightly prescribed a system of training Judicial Magistrates on the lines of that given in the State of Madras."

In conclusion he had said;

"Great responsibility now lies on our Magistrates in these 3 Districts of Cuttack, Puri and Balasore. They must act fearlessly and avoid dilatoriness. Nothing creates a worse impression in the minds of the witnesses who are brought to the court from long distances to give their evidence on a certain day than to be told to come again without anything being done that day. It is these dilatory tactics which give an appearance of plausibility of the definition of law as "a mouse trap easy to enter but not easy to get out of" Laws are again described as "nets of such texture as the little creep through, the great break through,but the middle size alone are entangled in." Our Magistrates by their personal conduct as well as by their competence in handling cases which appear before them should inspire respect not only for themselves but the law which they administer. They would do well to remember what the great Roman Emperor-Philosopher Marcus Aurelius has said in his 'Thoughts'.

"He who does wrong does wrong against himself. He who acts unjustly, acts unjustly to himself, because he makes himself bad. He often acts unjustly who does not do a certain thing, not only he who does a certain thing." I would, therefore, recall to the minds of these Magistrates their high duty and wish all success to this scheme which I have the honour to inaugurate."

Assuring full assistance to the High court in implementation of the scheme and hoping perfect understanding between the Executive and Judiciary as essential, the Chief Minister, Dr. Mahatab had said-

" The scheme will demand from the police and other Executive Officers more knowledge of law and more efficiency in the operation of the law. Similarly the Magistrates who have been so long on the Executive line and who will now be called upon to do only Judicial work will be expected to be prompt and expeditious in the disposal of their cases in a fair and impartial

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manner. I have no doubt our officers will prove equal to the task and the scheme will be a grand success."

The notification of the Revenue Department No. 21529R, Dt. 14th May, 1960 posting me as Sub-Divisional Magistrate, Bhadrak (mark the wording) read-"In exercise of the powers conferred by section 1 of the Code of Criminal Procedure 1898 (V of 1898) the State Government do hereby (1) place Sri Bishnu Charan Mohanty, Deputy Collector and Magistrate, 1st Class in-charge-of Bhadrak Sub-Division in the district of Balasore and invest him with powers under section 435 of the Code of Criminal Procedures 1898 and (2) relieve Sri Raghunath Sundar Ray, Sub-Divisional Magistrate of the charge of Bhadrak Sub- Division." Power to try offences summarily under section 260 CrPC was conferred by another notification.

I joined at Bhadrak on 2nd May, 1960. The Chief Justice in his opening address had sadly commented that in magisterial file, many cases remained pending for 2 even 3 years though in the High Court no criminal matter was pending more than six months. The Magistrates had been expected to remedy the unsatisfactory state of affairs. It was a pleasure to wipe out all pending year old cases at Bhadrak with the assistance of only 2 other Judicial Magistrates. In the first quarter of year 1961 I had examined 502 witnesses and had been commended by the High Court in Memo No.256, dated 18.5.61.

Most of the Magistrates spared by the Executive were very experienced but they had resented direct or indirect attempt to fetter or influence their judicial discretion in the Executive. They had a feeling that independence in exercise of their judicial discretion had landed them in trouble and delayed promotion. I was one of such unlucky magistrates. We had hoped to stick to judiciary with loss of pecuniary and fringe benefits only to enjoy freedom with no bossing or interference in day to day affair. But subsequent events belied the impression we had cherished.

In the early thirties at Berhampur (Ganjam) an appellate Judge who rose very high said to a Trying Magistrate " It has always been a matter of wonder to me how Trying Magistrate like you who must decide so many questions on the spur of the moment at the Bench with your Tour, Treasury, Tenancy and Touts make so few mistake" Knowing his magnanimity, the Magistrate shot back, 'Sir, I always marvel how Appellate Judges, unlike you, with skilled advocacy and representation at command make so many damn mistake.' The great Judge simply smiled. This was before the dichotomy of Executive and Judicial magistrate had been introduced. The

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Magistrate from the Civil Service (Ex-Branch) administered criminal justice and the civil case was left to the Munsifs (of the Judicial Branch). Most of the criminal cases then as of now are directed against the poor people and most of the civil litigation that proceeded leisurely, involved money and affluent clients.

The word Tout which is used now frequently in respect of middlemen parasites in society needs explanation. The word had been defined in section 3 of the Legal Practitioners Act, (XVIII of 1979) since repealed. Tout means a person (1) who procures in consideration of any remuneration moving from any legal practitioner the employment of the legal practitioner in any legal business, or who proposed to any legal practitioner or to any person interested in a legal business to procure in consideration of any remuneration moving from either of them the employment of the legal practitioner in such business or (b) who for the purpose of such procurement frequents the precints of civil or criminal courts or of Revenue offices or railway stations, landing stages, lodging places or other places of public resort, See 36 of the Act empowers the District Magistrate or Revenue officer not below the rank of a Collector of a district to frame and publish list of persons proved to his satisfaction by evidence of general repute or otherwise habitually to act as touts. When a Subordinate Magistrate or Revenue officer knows that a person is alleged or suspected to be a tout the matter is reported to the District Magistrate under sub-section 2 (a) of Section 36. The District Magistrate may direct the subordinate Magistrate to hold the enquiry, give a chance to the suspect to put forth his explanation and to report the matter if the enquiry satisfies him that the suspect is a fit person to be declared a tout. The District Magistrate includes his name in the list prepared under Section 36 of the Act. There after if the person frequents the premises of Courts or Revenue Offices and acts as a Tout he is liable to a punishment of fine of Rs.500/- imprisonment for three months or both. This provision deterred the village crooks in exploiting simple unsuspecting litigants to be involved in litigation.

When Judiciary had not been separated the members of the Executive Branch of the Civil Service tried all criminal cases triable by a Magistrate. They Tried Tenancy cases, administered Treasury, conducted Tour and declared Touts. Some exercised appellate powers. Some exercised powers under section 30 Cr.P.C. 1898 under which they could try any offence not punishable with death or transportation for life. Their performance was creditable. Their judicial decorum, impartiality and fair conduct was never questioned. The District Judges used to annually record their opinion of the Magistrate, 1st Class in the C.C.R. When the Law Commission took evidence

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of members of the Civil services such Magistrates were sent who had possessed no law degree, Justice R.L. Narasimham, ICS, the former C.J or Orissa and Patna High Courts had no law degree. In U.S.A the qualification for a Judge or Chief Justice of Federal Supreme Court does not include a law degree. The qualifications required by the constitution are that a person shall have been a member of the State bar for certain prescribed period depending on the nature of judicial responsibility he is to shoulder. Qualifications beyond the legal minimum considered by the Judicial Nominee Evaluation (JNE) Commission are the nominee's type of experience, knowledge of the law, judicial temperament, fairness and objectivity, courtesy, administrative ability, work ethic and professional reputation. With the introduction of Separation Scheme in 1960 officers were chosen closely by the then Special Officer (later Justice) B.K.Patra. Chief Justice Narasimham also had taken fancy on certain officers whose work he had occasion to review or whom he had personally known. The reward for a Magistrate was the satisfaction it offered and it was more internal than external. The number of Officers with a first class law degree in the judicial cadre was almost negligible but about half a dozen magistrates with that credit had opted for it from the Executive. They were prepared to be absorbed permanently with a view to getting job satisfaction. The scheme worked well. The pendency was reduced to the minimum in spite of the handicap under which these officers worked. But later many left. Nobody bothered to find out the reason.

The aim of Separation as was given out in the speeches of the Chief Justice and others was to act fearlessly, avoid dilatoriness, inspire public respect for law and the Magistracy. The man in the street is to analyse and judge how goals have since been achieved after more than 38 years. Certain prescribed rules had worked wonderfully in the past. Madras Board's standing order (B.S.O) corresponding to our G.R.C.O prescribed, that copy of an acquittal judgment in a case should reach the District Magistrate within 3 days from the date of delivery. It checked slip-shod work. You cannot afford to pronounce the judgment in open Court and later take your own time to write it out. Now you can do it provided, the lawyer for both the parties are accommodating and it has a price you pay. The judgements sent to the District Magistrate used to be scrutinised by the Magisterial Head Clerk (M.H.S) (Corresponding to Judicial Peshkar in coastal districts) on behalf of the District Magistrate. If it needed reversal the concerned authorities were instructed accordingly. Even the language in the judgment was commented upon. Section 258 of old criminal procedure Code had laid down that an accused person should be first found guilty, convicted and then sentenced to a punishment of imprisonment or fine. In a particular case a Magistrate

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exercising 1st Class powers had simply sentenced the offender to imprisonment without finding him guilty or convicting him. Government took a serious view of it when it was brought to their notice. His Magisterial powers were reduced. His work otherwise was satisfactory.

Senior Magistrates were sometimes entrusted with important cases for trial. When their judgments were delivered the same were copied and circulated to magistrates in the district for perusal as model judgment. In 1949 soon after merger an ex-State Officer working as Additional District Magistrate, Sambalpur was hearing appeals from the judgments of Second and Third Class Magistrates. He was very fond of setting aside the order on some ground or other and it did not appear to everybody that a sensible view had been taken. It was brought to the notice of the District Magistrate. He selected 5 cases at random from the pending files of trying Magistrates, transferred those to the appellate Magistrate (Additional District Magistrate) for trial with a forwarding letter that it was being done to take advantage of his rich experience as Trying Magistrate. He was requested for a speedy trial, so that the judgments could be circulated as model judgments to the Magistrates in the District. The trial never ended. The Magistrate got the hint. His approach changed. The output improved with meticulous care. The quality of judgment in lower courts would improve if model judgments are written and circulated. District Judges in the Forties and Fifties who were not many, discussed problems in circuit court with Magistrates when they met the Judges on courtesy calls there. They guided magistrates through critical appraisal of CrPC. and Evidence, Act explained implication of new Legislation like ESTP Act.

"A Judge' in Curtis Bok's epigram,' is a member of the Bar who once knew a Governor."

I had a difference with the authorities while at Berhampur. My temperament training and tradition failed to fit in squarely with the setup contemplated. I could have been disciplined if I was at fault. I could have been sent back to the parent cadre unceremoniously in case I was considered inefficient or undesirable. But no, Such demeaning behaviour is expected of common people in the executive. I was transferred from the border of Andhra Pradesh to the border of Bihar (Bonai) as if in between there was no station befitting my inefficiency, inexperience or tactlessness in not toeing the line of the District Judge, well aware that I had two college-going children and there was no college at the new station. The order was passed on the eve of the Puja Vacation. I was required to join on the reopening day without

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availing myself of any joining time as if this privilege in the Orissa Service Code was a favour shown by a Head of the Department. I knew that if I go and ingratiatingly curry favour with the Satrap it would be cancelled. But no ! A loud voice vibrated in every single cell of my brain boiling with indignation at the thought. I joined in the manner desired. I was sent back to the parent cadre from there after six months, knowing well that I could not have been fixed to a covetable post at that season.

During the past 30 years I have been brooding over this unsavory incident. There have been many others who have suffered similar fate silently. In the Executive a transfer uncalled for or vindictive is rectified by functionaries at the different levels of the hierarchy. It is even agitated at the legislature and Government discredited. But in judiciary what is there to safeguard the interest of the victim ? Plato described pretended justice being the worst form of Justice.

"Justice is sweetest when it is freshest"

-Bacon

"Delay of justice is injustice"

-Landor

"Defer no time; delays have dangerous curves"

-Shakespeare

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- *The late Max Steuer, the prominent lawyer, was compelled to apologize to the court one day. With stately dignity he rose in his place and, bowing to the judge, said: "Your Honor is right and I am wrong, as your Honor generally is."*
- *There was a dazed look in the judge's eyes. He hardly knew whether to feel pleased or fine the lawyer for contempt of Court.*

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CHAPTER-VII

A CROW AT THE MINARET

Through tattered clothes; small vices do appear
Robes and furred gowns; hide all
- Shakespeare (Hamlet)

"Three passions, simple but over whelmingly strong, have governed my life; the longing for love, the search for knowledge, and unbearable pity for the suffering of mankind. These passions, like great winds, have blown me hither and thither, in a wayward course, over deep ocean of anguish, reaching to the very verge of despair.

......Love and knowledge, so far as they were possible, led upward, forwards the heaven but always pity brought me back to earth. Echoes of cries of pain reverberate in my heart....... I long to alleviate the evil but I cannot, and I too suffer."

Thus begins the Autobiography of BERTRAND RUSSEL, (1872-1970) one of the towering intellectual and humanitarian figures of this century. With separation of Judiciary in 1960 I recollected the opening sentences of the book that had just been published in India and opted for permanent absorption in State Judiciary. I know the job of a Magistrate was most satisfying for me to alleviate the evil. The reward is more internal than external, more cerebral than emotional, Judge Learned Hand, the great Chief Judge of U.S.Court of Appeal for the Second Circuit kept under the glass top of his desk what CROMWELL spoke to his men 'I beseech ye in the bowels of Christ think ye that ye may be mistaken.' This Learned Hand who for 42 years wrote numerous lucid opinion (judgments) on the major issues of his day speculated on whether he might have accomplished more by constructing a boat or building a house. In the end, his magnificent judicial career seemed to him some what ephemeral and insubstantial. And that was exactly my feeling when I left it disillusioned.

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On the introduction of the scheme for the separation of Judiciary from the Executive manned exclusively by administrative officers spared by the Executive, I had the experience of a funny District Judge. He boasted that he was a direct recruit from the Bar. The Bar was located at a station in the partially excluded area under the Government of India Act 1935. For the administration of the special laws and Regulations applicable to the area the Subdivisional Officer (now Sub-Collector) was the highest executive and judicial authority. A wag had once said among the Judges there are some who know law. There are others who know the Law Minister. Our Judge who had once unsuccessfully contested the election to the State Assembly belonged to the second category. He had a grouse against Administrative Officers. Even third class Magistrates had rebuked him daily for non appearance whenever they desired and had made him wait for hours for their august presence after a strenuous tour in the field when in the afternoon he had wanted early departure for home. He now wanted to show how great he was and how influential he was with the authorities at the top. He wanted to inspect the court of the Subordinate Magistrate, Chapter 11 Rule 2 of GRCO Crl. Vol.1 1949 Edition of Orissa High Court read as below.

(a) when convenient as for instance during any vacation not availed of or at the time of inspecting outlying Munsifs the Sessions Judge should visit the Courts of Magistrates of the first class (excluding District Magistrates) His inspection of these courts should be of a general character and directed rather to judicial than to executive matters. He should sit with the subordinate Magistrates concerned, advise them in matters of procedure and consider generally their conduct of proceeding before them. He should also examine some of their records and scrutinize the orders passed by them at various stages of trial e.g. orders admitting to bail, for issue of summons to and warrants for the arrest of witnesses, for adjournments and so forth.

(b) As Courts of subordinate magistrates are inspected by District Magistrates and Divisional Commissioners officers whose attention is directed in the main to such details as the maintenance of the Registers and the state of the office visited- the Sessions Judge should not occupy himself with those matters.

(c) While the Court are anxious to encourage inspections of the above nature, whenever possible, it is to be understood that they should not be permitted to prejudice the proper discharge of sessions Judges more important duties and should therefore be carried out only when

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that officer can find time for them without detriment to his other work. No detailed report of an inspection need be submitted to the High Court; It will suffice if the mere fact is reported, unless the Sessions 'Judge's visit has disclosed any facts of unusual interest or importance.

An inspection should, if time permits, take the form suggested in paragraphs (a) and (b) of this Rule, but the court attach greater importance to the supervision of Magistrate's actual judicial procedure in court than to an examination of his records, a number of which are likely to come before the Session Judge on appeal."

As Magistrate I showed him the relevant Rules. The District Judge had wanted his inspecting staff to check each and every Register to see trifles like bringing forward year old cases in red ink, timely compliance with requisition for records from appellate courts, punctual indent of forms & stationery, proper utilization of the services of peons and process servers, neatness and cleanliness of court building maintained by the Works Department etc., The ill-drafted inspection notes over pages by the ministerial staff would lighten his burden leaving scope only to mention in General Remarks if the work was satisfactory or otherwise. He must inspect and use the occasion to denigrate subordinate Magistrates. He would not listen. He did it, Ruffled over the temerity of a subordinate Magistrate to point out Rules to him inspite of the provision in the Rules itself that 'no detailed report of an inspection need be submitted to the High Court' he sent a copy to the High Court With over sized ego he had felt that his authority to inspect had been questioned by a petty Subordinate Magistrate lent out by the Executive and unless nipped in the bud it would mean the beginning of the end of the discipline in the administration of Judicial services. His covering letter was pathetic. Without hearing the poor Magistrate the Court conveyed the following observation on his work for that year.

"The Court disapproved your conduct for commenting upon and criticizing the notes of inspection of the Dist. Judge in your compliance report." The demur of a Judge resulted in judicial dys function.

I received a letter dated 5.1.65 from the Dist. Judge which I quote in full.

'Today at 10.45 AM I visited the building of the Criminal Court at Berhampur and found that the floor was not properly cleaned, there was

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deposit of rubbish all round below the verandahs, the floor has been damaged at several places and the steps are also broken.

You are requested to pay particular attention to the neatness and the cleanliness of the building. You should move the PWD to do the petty repairs required to the floor and the steps and report the result to this office."

This is inspite of his knowledge that the Executive Engineer (R&B) had been moved soon after I had joined on 1st July'64 earlier on 3rd July'64 by me. The District Judge had a Registrar to look to all that but his services were not utilised. The services of the sweeper was being utilised elsewhere. I had no permanent advance to purchase baskets, broom stick or long handle brushes and the Dist. Office made no supply. The District Judge was blissfully ignorant of what was a permanent advance or its usefulness. Had this been the tantrum of a District Magistrate I could have got it to the notice of the Government and made him eat the humble pie. But here I had to bear it silently.

Another instance of the administrative efficiency of this District Judge is interesting and worth record. As a Sub-ordinate Magistrate I went on leave. I left my leave address with the District Judge, C/o Post Master, Berhampur. For residents who do not have a fixed place because of their itinerary such procedure is prescribed in the Postal Manual. The addressee comes to the Post Office and collects the mail at his convenience. Blissfully ignorant of such a common practice the District Judge had sent the letter meant for me to the Post Master in the Dak Book of his office. As expected the post Master refused to receive it. It came back to the sender. I was accused of supplying an incorrect address to him while enjoying earned leave. My conduct in protesting at his ignorance brought me the recorded remark.

"Highly impertinent, Grossly indisciplined and insubordinate, unjustifiably feels inflated." Earlier the Court had commended my performance for having examined 502 witnesses in one quarter, the highest in the districts but that was erased from memory, with the District Judge hammering that I was not sincere and that I did not deserve the encomiums showered upon me by the Judicial Additional District Magistrate as the Reporting Officer in the C.C.R of the year, 1964-65, I was perplexed. The latter had assessed me.

"An intelligent officer who commands the respect of the Bar for his legal acumen and thorough grip over fact and law, Methodical, Integrity be-

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yond question. With administrative skill alive to responsibilities Dependable and fit for higher responsibility." No wonder Judiciary got depleted of the Administrative Officers who had opted for it at heavy cost only to enjoy the independent approach and to shun servility. It is they who had made the scheme a success inspiring confidence with the general public.

I compared the treatment meted out to me with the dignified conduct of another District Judge in pre separation days. He had been subsequently elevated to the Bench and on retirement had adorned a university as Vice Chancellor and other constitutional posts. He was popular through out the State for his impartiality endearing and accommodating manners and readiness to help the general public Sub-ordinate magistrates and staff. The Orissa Opium Smoking Act was enacted in the year, 1947 to provide for the control of the practice of opium smoking which was more injurious than consumption of alcohol. The Act aimed to secure the ultimate prohibition of opium smoking. The penalty prescribed in Section 7 for being member of an Opium Smoking Assembly and in Section 8 for smoking opium or possessing opium smoking apparatus was originally imprisonment for one month or fine of Rs.100/- or both. But the Act had been amended subsequently and the penalty had been raised to imprisonment for one year of fine of Rs.1,000/- or both. In an excise case before me as Magistrate 1st Class Russulkonda (just renamed Bhanjanagar) I had convicted the accused for opium smoking and had sentenced him to imprisonment for six months. The convict was rich and influential. He could have paid any amount as fine but his social status and dignity suffered as a result of the stigma that arose out of a sentence of imprisonment. He went up in appeal and engaged a very Senior but costly Advocate from Berhampur to argue his case. The Act had been recently amended. The amendment slip hadnot been placed in the Act. It was argued that when the maximum prescribed penalty was one month the Magistrate had committed serious illegality and gross impropriety by imposing a sentence of imprisonment for six months. His ignorance was lamentable. Unfortunately no attempt was made to check it the prescribed penalty had been subsequently enhanced. If was more so because a Senior Advocate was quoting it. Of course it was a very minor Special Act. The Advocate did not handle cases under it often. He was very likely not in possession of a copy of this amended. Minor Act and had depended on the copy in the District Court Library for his reference. The argument was accepted. The sentence of imprisonment was reduced to the period already undergone and in modification a heavy fine was imposed. For ample caution and for guidance of Magistrate the District Judge thought it proper to point out to the Trying Magistrate to look to the penal provision carefully before imposing sentence. He commented ' it is unfortu-

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nate that an experienced Magistrate should commit such a mistake. I received a copy of the appellate judgment. On the face of it, it was incorrect. But any portion of a judgment could be ordered to be expunged only by the High Court in exercise of its inherent powers under section 561 A CrP.C. I was unhappy. The comment would give enough handle to my awe-inspiring Member, Board of Revenue to initiate departmental disciplinary action against me. Before proceeding to consult legal profession, I met the concerned District Judge with the Act as amended. Not only he was taken aback but he was most apologetic. He made arrangement for my comfortable stay that night and advised me to mention the facts and circumstances under which the offending sentence has found place in his judgment. I wrote it out in the nature of a petition before the District Judge. He assured me that the petition would be taken up and disposed of in court at the first hour on the day following. I agreed to stay on. Next morning on my presenting the petition it was taken up as a Misc. case. The order was dictated on the Bench then and there. It described how the District Court library was inefficient and how a Magistrate of Moffusil court against tremendous odds had kept his library up-to-date and had pointed out the deficiency in the order. It was couched with all compliments to me and the order formed "part of the main appeal judgment delivered" earlier. It was also ordered that a copy of it should be sent to District Magistrate, R.D.C Member Bd. of Rev. and Revenue Secretary. My joy knew no bounds at the turn of events. I could in my life never forget his courtesy and sympathetic attitude to my problem.

My later experience made me remember the Sanskrit aphorism. Prasada Sikharsthope KaKa Kim Garudayate. (ପ୍ରାସାଦ ଶିଖରେସ୍ଥପି କାକଃ କିଂ ଗରୁଡାୟତେ) A crow does not become a Garud sitting at the top of the minaret. I agreed with Sir Mirza Ismail' Genius has its limitation foolishness suffers no such handicap' Determined not to lose honour and self-respect after pecuniary loss I decided to quit Judiciary.

On the eve of my transfer, I had received on 5th Oct'1965, a letter from the President,Berhampur Bar Association, Sri Bhubaneswar Rath, Public Prosecutor and Government Pleader. I considered it a greater reward than that the authorities could have given me. I reproduce the entire letter:

"This is to give expression to my sincere regrets at your transfer. Though we have not met, even once, outside the court believe me I always held you in sincere regard and was even full of praise for your work on the bench. Your unfailing courtesy to the Members of the Bar, who appeared

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before you was the constant theme of talk in the Association Hall as also your anxiety to do justice in a case. Wherever you may be we will be remembering you for the above endearing qualities and our good wishes would be following your steps. We could never expect that you would be indefinitely remaining in our midst, but we feel that your transfer is at least one year too soon. Personally speaking, I have seen Magistrates without number during the forty years I have practised at the Berhampur Bar both under the Madras and under Orissa but I have noticed in few among them the high spirit of Independence coupled with absence of consciousness of power which are your outstanding traits. Believe me I shall always be remembering you during the few years that may be left to me"

"A bad mannered Judge is a disgrace to the Bench"

-: o :-

- *A deaf man went to law with another deaf man, and the Judge was much deafer than either. One of them stated that the other owed him five month's rent and the other said that his opponent had been grinding corn at night to avoid Tax. The Judge looked at them and said, "Why are you quarreling ? She is your mother; you must both support her."*

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CHAPTER - VIII

THERE AND HERE
WORKING WITHOUT FEAR OR FAVOUR

The highest proof of virtue is to possess boundless power without abusing it ***Lord Macaulay (1800-1859)***

"Wednesday July 24, 1974, began as usual as a typical Washington summer scorcher In the western White House at Sean Clemente a shattered Richard Nixon, his reputation and Administration in a shamble was struggling to cling to office. If he could stand off the impeachment effort of the house Judiciary committee and lost out his term perhaps something could be salvaged for the history books. After all there were still many on Capitol Hill and in the Country who were reluctant to condemn the President for the Watergate cover up on the evidence then available. These hard core supporters asked for more direct unambiguous evidence that Nixon had ordered an obstruction of justice . They wanted a '*Smoking Pistol*' and they had not found it in the edited transcript of taped Presidential conversation that White House under pressure from Congress and the news media, has thus far made public. Here was a slim hope for Richard Nixon. But not for long. For on that hot Wednesday the Supreme Court of the U.S.A. voted 8-0 to require Nixon to turn over the tapes of over forty other conversations to the Special Watergate Prosecutor Leon Jaworski. Three months before Jaworski had sought subpoenas legal order for "all tapes and the electronic and/or mechanical recordings" of sixty-four Nixon conversations that had taken place between June 20, 1972 and June 1, 1973 - the critical cover-up period.

The President and his Lawyers had fought the issuance of the subpoenas all the way. They argued that the doctrine of executive privilege prevented courts from ordering the President to divulge his private conversations. Under our separation of powers, it was, urged each branch must respect the privacy of the others. The Judicial Branch could no more penetrate the Oval office

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at the White House than Congress could demand transcripts of secret Supreme Court deliberations between a Member of Congress and Colleagues.

It was a nice point. Informed opinion in the country was divided. But the Justices had the final word. The question of the validity of the subpoenas was quickly appealed to them and in an opinion by Nixon's own appointee as Chief Justice Warren Burger, the court held that the need for crucial evidence for a criminal trial sometimes outweighs the need for confidentiality of Presidential Communication protected by the doctrine of executive privilege.

The decision was a final blow to Nixon's hopes. Presidential assistants of San Clemente wondered in the first minutes after the news was flashed from Washington how to tell the President. Someone noticed that Nixon's Irish setter was wandering toward the door of the President's office and suggested putting a sign around the dog's neck announcing '*WE LOST*' Nixon had previously suggested that he might not obey the subpoenas even if their legality was upheld by the court. Any impulse to do so, however was quickly squelched by the President's Chief Attorney distinguished Boston lawyer James St. Clair and his Chief of Staff Gen. Alexander Haig. In a brief statement to the press towards the end of that memorable Wednesday St. Clair announced that Nixon would comply completely and immediately.

A few days later(August 5) knowing that the tapes being given to the special prosecution force would soon be public, the President of the US, on national television admitted to the country that he had lied in denying an attempt to deflect the FBI investigation of the Water-gate break-in.

Had the Court flinched at deciding the issue or decided the other way Nixon might have hung on. But it did not and for the first time in American History a president resigned in disgrace.

In this very dramatic incident we see the court under severe pressure performing several of its classic functions. It successfully redefined the relationship among the coordinate branches of the federal Government, it vindicated the supremacy of law within the American Governmental system and it made some new constitutional law. Most important, it demonstrated again its own uniqueness as an institution of Government. Its decision in effect drove the combined head of Government and head of state from office- and no one seriously questioned that the decision should and would be observed. The Courts action was almost instantly accepted as legitimate and binding. It is worth remembering that when another head of another democ-

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racy (India) tangled with her courts later that same year the result was a three -year suspension of civil liberties and Mrs. Gandhi's continuance in office." (American Politics Direction of Change Dynamics of choice by Margan Donovan and POTHOLM 1979 Edn.)

Here is another incident in Mountain view in Santa Clara county on 8 Sept. 1993 while I was at Cupertiono Safrancisco C.A. Lt. Stere Gray was on traffic duty. Mayor Dena Bonnell came to attend the council meeting in City Hall. She asked lt. Stere Gray for permission to park in handicapped parking during the Council meeting. Lt. Gray pointed out that parking was available just two blocks away although the City Hall garage had filled due to a jazz festival. But the Officer on duty felt that Mayor's action smacked 'of arrogance in the highest order'. But Mayor Dena Bonnel's call instructing Mountain view police not to ticket her illegally parked car, so enraged the Lt. on duty that he wrote to his superior accusing the Mayor of "attempting to influence duty bound police response" and branding her actions 'repugnant.' "The fact that she has intimated communication personel into believing that she has enough influence to order immunity for herself is reflective of how seriously juxtaposed right and wrong are" Gray wrote in his memo. "I for one will not extend to her or any other person of influence any immunity for violations for which the lay person would be prosecuted" A violation for illegally parking in a handicapped spot carries a $ 250 fine. Local newspapers started investigation on the story. Police Chief Brown Taylor confirmed this was not the first time Bonnel has gone directly to line officers with a request or a complant. Earlier in the year Bonnel asked a Sergeant covering a down town festival why a street had been blocked off when the closing had not been planned. Bonnel also called, identifying herself a Mayor complaining about loud music at a muscular dystrophy fund raiser near her work. Taylor the police Chief defended the Mayor's judgment in both the cases pointing out that she had merely raised a question in the first case and acted as any citizen could in the second case. The Mayor said she regretted her decision. Gray later said "this was an error in judgment on her part- the kind that all people make and learn from and I am sure as far as the Police Department in concerned the matter is closed." But the advocate for the handicapped were less forgiving. Donna Hal Stead, a disabled person from Santa Clara said 'It is degrading. It is like she is brushing us aside and saying' wait until I am through here.'

The little incident, the furore raised over it in the press and public showed how public opinion reacts to any attempt to defy law even in an insignificant matter. It also explains practical application of equality before law embodied in the constitution of U.S. by the amendment.

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Now coming to an instance in India and Orissa in particular. The Labour contract Cooperative Society of Kendrapara was superceded under the orders of the Deputy Registrar, Co-operative Societies, Cuttack. The Assistant Registrar, Cooperative Societies, Kendrapara was appointed as the Administrator. ABP was the Secretary of the L.C.C.S. at the time of supersession. He was a local leader of a regional political party. He had contested the state Assembly election on that party ticket and had lost. The Administrator requested him to make over charge of the records and the properties of the society. There was no response. The ARCS waited for about four months when the ex-Secretary wanted time on the ground that he was busy with his brother's marriage. Time was allowed. He was asked to come to office with other ex-Office bearers for discussion to facilitate making over of charge. But the ex-Secretary wanted time even for discussion. As the list of properties to be delivered included steel Godrej Almirah, Wooden and steel furniture, cash balance. National Defence Certificate besides valuable records of the LCCS. it was discussed in the Sub-Divisional Development Committee meeting. The ARCS was apprehensive that the Secretary would not make over. He was advised to take action under section 33 of the Orissa Co-operative Societies Act, 1962 under which he was to move the Sub-Divisional Magistrate (also the S.D.O) for securing possession of Records and properties of the Society as reported by the former President. Acting on his report theS.D.O requested the ex-Secretary to make over charge of records and properties by a particular date. As he did not comply with that order a search warrant under section 33 (3) of Orissa Co-operative Act was issued. The defaulter came to know that a warrant had been issued against him. He did not understand the difference between a search warrant and an warrant of arrest. The local police had a grouse against him. On receipt of the search warrant, they had, fearing that the defaulter being rich and influential may create trouble in its execution had moved. Armed Police Reserve to guard the premises to be searched. The defaulter put in a petition to recall the search warrant on the understanding that he would make over promptly. Time was granted accordingly. Later the Deputy Registrar, Co-operative Societies requested to keep the search warrant in abeyance as the defaulter had made over charge partially. The Search warrant was recalled but that did not end matters.

The ex-Secretary whose party by then had formed the Government in coalition with another party took it as a challenge to his authority. His vanity had been wounded. His esteem in the eye of the public had been lowered. The conduct of the Magistrate issuing the search warrant could not be faulted with. He moved the Revenue Minister also of his party and got the S.D.O. transferred to the northen most extreme of the State with immediate effect. But the

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opposition in the Legislature that was in session came to know of the development. An adjournment motion was moved in the Assembly to discuss the untimely and motivated transfer which had been communicated to the Officer telegraphically for immediate compliance. They felt that it was done to screen the defaulter and several other offenders whose conduct in several alleged cases of misappropriation of public funds the S.D.O was then investigating. The Minister in-charge defended the transfer on the ground that although the officer was there for about seven months he was being disturbed as he was going out on promotion. This was not a correct information. He was not hauled up for furnishing incorrect information to the House. No breach of privilege was tabled against him. After 2 days of deliberation the matter was simply talked out on the reply of the Chief Minister. The Minister to save a party colleague had perhaps consciously made a false statement in the house. Such instances can be multiplied, where service without fear or favour, affection or ill will has been penalised.

A state Minister when he takes the oath of Office and Secrecy swears that he will bear true faith and allegiance to the constitution of India as by law established; that he will faithfully and consciously discharge his duties as a Minister for the State of Orissa and that he will do right to all manner of people in accordance with the constitution and the law without fear or favour, affection or ill-will. But in practice he rarely acts on the oath administered to him. In the U.S.A most courts have held that, statements by Ministers contrary to oath would not constitute perjury though contrary view has been taken by some other courts. In our country the matter has not been probably agitated in courts and that protects Ministers harassing non-pliant sub-ordinates. This state of affairs can be cured only by a vigilant press and a conscious public opinion that we lack at present.

"Every society gets the kind of criminal it deserves and equalily every society gets the kind of law enforcement agency that it insists on"

- B. Kennedy

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- ***A stranger arriving in a small New England town, approached the first native he saw and asked" Have you a criminal lawyer in this town?" " Well" replied the native cautiously, " We think we have, but so far we can't prove it on him".***

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CHAPTER IX

YEARS AFTER SEPARATION

> *Justice always whirls in equal measures.*
>
> **-Shakespeare**
>
> *.D-A= C (Discretion minus accountability equals corruption)*
>
> **Prof. Kilgaard of Rand Graduate school, California**

In 1937 K.M.Munshi, the renowned jurist assumed the office of the Home Minister of Bombay. In the old days, the relations of the Chief Justice and the Governor were uniformly cordial but those of the High Court with the Home Department of Bombay were strained. As a result the Chief Justice dealt with the Govt. only at the Governor's level and asserted his independence against the Home Department's attempt to encroach upon the power and authority of the High Court particularly over the judiciary in the state. The Congress Ministry was pledged not to allow the Governor to interfere in the administration . Sir John Beaumont had been the Chief Justice for over three years. Deciding to put an end to the continuing feud between the High Court and the Home Department, Munshi walked up to Beaumont's room and secured a promise from him that all points of controversy thereafter should be settled between him and the Chief Justice by mutual discussion and not by official correspondence. To the criticism of his colleagues that his going to the Chief Justice to appease him had brought the prestige of the Govt. low, Munshi retorted by saying that our greatest safe guard against public criticism would be to respect the independence of the High Court. It would be an evil day he said when the High Court judges had to depend upon the goodwill of the Ministry. But Beaumont, free from racial bias, in late years after civil disobedience movement had developed in him an anti-Indian complex in matters political.

As Home Minister Munshi was responsible for quelling one of the worst riots that threatened Bombay in 1938. They had become a regular

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feature of the city's life extracting a toll of scores of human lives every time. On this occasion he had to warn some newspapers not to indulge in the pernicious practice of reporting murders community wise. Three or four papers did not heed the warning and the Home Minister got the Chief Presidency Magistrate to issue an order under section 114 Cr. P.C. subjecting their reports about the riot to pre-censorship. This order, its purpose served was withdrawn on the third or fourth day. Inspite of this one newspaper went to the High Court in revision against the order which was no longer in force. In the course of the hearing the Chief Justice expressed a dislike of the Govt. in terms which Munshi did not expect him to from the Bench. When Munshi happened to meet Sir John a few days later, he triumphantly remarked " Munshi, I have declared your order invalid." Munshi retorted " If the riot breaks out again, I am going to issue a similar order if it is going to help. My duty is to restore order, your duty will come after order is restored and if it is restored "Such was the approach of an eminent jurist in administration of law and order.(Kulpati's letter on Life Literature and Culture No. 259)

Separation of Judiciary aimed at fearless action, avoidance of dilatoriness, to inspire confidence in Magistracy and respect for law. A man in the street may now analyse the present position. According to report published in the Statesman dt.22 july 81 briefing reporters the Chief Secretary of West Bengal Sri A.K.Sen said that according to a survey conducted by the centre in 1980, there had been 175 crimes per one lac of population in West Bengal. At the meeting of Chief Secretaries in New Delhi to review law and order situation , it wasrevealed that it was 187 in U.P, 184 in Tamilnadu, 278 in Maharashtra, 644 in Delhi, 112 in Andrapradesh, 134 in Haryana and 72 in Punjab. The meeting also expressed concern at the increased number of pending cases. The figures had gone up since the separation of Judiciary from Executive ; inspection machinery was inadequate. It was accepted at the meeting that Executive Magisterate should be given power to try the cases other than those under the I.P.C The Cr. Pc should be amended if necessary.

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According to statistics given in the Statistical Outline of Orissa 1997 published under the authority of Govt., the number of criminal cases disposed off and pending in Orissa in the years 1990 to 1994 is as given below

NUMBER OF CASES	1990	1991	1992	1993	1994
1	2	3	4	5	6
Criminal pending at the beginning of the year	1,27,627	1,52,832	1,61,860	1,61,115	1,79,913
Instituted and transferred from other courts in the districts during the year	1,26,940	1,09,003	1,14,443	1,19,305	1,27,471
Total for disposal during the year	2,54,567	2,61,835	2,76,303	2,80,420	3,07,384
Disposed off during the year	1,01,735	99,975	1,15,188	1,00,507	94,303
Remained pending at the end of the year	1,52,832	1,61,860	1,61,115	1,79,913	2,13,081

In the year 1990 only 40% of the pending cases were disposed of as year closed. In the following years 1991,1992,1993 and 1994 it was 38%, 42%, 36% and 31% respectively. At the end of the year in 1990 pendency increased by 16%. In subsequent years 1991,1993 and 1994 the increase has been 6%, 10% and 16% respectively. Only in the year 1992, the disposal equalled institution. In that year 1,61,115 cases were pending at the end of the year as against 1,61,860 at the beginning of the year. Pendency at the end of the year has gone up from 1,52,832 at the end of 1990 to 2,13,081 at the end of 1994. There were 179 courts of SDJM and JM besides 33CJM and Addl. CJM. Disposal in 1994 an average for each Magistrate came to about 1450 and about 121 per month which includes both contested and uncontested cases.

In pre separation days Trying magisterates except those in charge of subdivisions had no stenographer for their use. At the time of separation in

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1960 the disposal rate for each magisterate was fixed at 25 contested cases. Statistics reveal that more cases are brought to trial annually than the disposal and the snowball rolls on. But before separation in some ex-state areas the munsif functioned as magistrates. The sub-Divisional Magisterate (A deputy collector) used to take cognizance and send them cases for trial. But on certain days the Munsifs had no civil work. Cases fixed might have been adjourned at the instance of parties or for similar reasons. In order that the High courts may not take them to task for whiling away time, the Munsifs used to request the SDM for transfer of ready cases to them for trial. The SDM a touring officer might not be available , but to keep themselves engaged they even requested a junior Magisterate in charge of general file- an officer ordinarily a sub-deputy Collector- to transfer such cases. The false sense of prestige vanity or self-esteem did not deter them to spend a few hours in court idly.

Since the establishment of colonies in America the public has had a role in the judicial process not only as litigant but also as spectator and participant. Trials have been open to the public so that they cannot be abused for political purposes. Members of the public have traditionally participated in civil and criminal trials with jurors. But in our country the practice of trial with jurors and assessors was given a good bye with our independence. A common man may suffer but he has no voice in rectifying it. A Magisterate or a Judge may suffer simply because he falls from the grace of the authorities. In spite of failings somebody may thrive but the man in the street has no voice to discipline him. Judicial officers have suffered silently as also the common man.

My intimate experience of two decades in trying courts leads me to suggest a few changes in the working of the system.

(i) The judicial magisterate may try only offences under the Indian Penal Code. During the year 1991 there were 1,05,296 offences under the IPC and 1,12,971 under other Acts. Cases under the local and special acts may be tried by the Executive Magistrates empowered as Judicial Magistrates for the purpose. Now that lateral entry into the services is common elsewhere promising magistrates with legal acumen and a law degree may be absorbed in the judiciary at the appropriate level, which would bring freshness and glamour to the state judiciary.

(ii) Power of magisterate to take cognizance upon information received

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from a person other than a police officer u/s 190(b) or upon his own knowledge u/s 190(c) Cr. Pc. should also be given to Magistrates-in-charge of Districts and Sub-Divisions so that while on tour they act where police has been inactive. At present the operation of this sub-section appears obsolete with Judicial Magistrates.

(iii) Final report submitted by the police at the conclusion of investigation u/s 173 Cr Pc. should be scrutinized by the SDJM and he should send the scrutiny report to the Chief Judicial Magisterate and the Magisterate of the District, the latter to watch police investigation.

(iv) Judgement in acquittal cases should be sent to the Chief Judicial Magisterate so as to reach him on the next day if at the same station and not later than the 3rd day if outside.

(v) The Chief Judicial Magisterate should Quarterly review the pending year old cases with each magisterate and fix responsibility if the delay is caused by absence of Magisterate, prosecuting staff ,defence lawyer, non-availability of form stationery, return of service of processes and similar other avoidable but trifling reasons. In the first 5 years after the introduction of separation scheme the pendency of year old cases had been reduced to almost zero by Special officer-cum-Additional Dist. Magisterates Judicial strictly scrutinizing the records for such lapses that contributed towards delay and by commending the work of such Magisterate who had shown exemplary disposal of old cases.

(vi) In pre-war days the Munsifs used to be trained with the Deputy Collector, in survey settlement work in the field in order to be closely and correctly acquainted with the rural life and problems. It is now desirable that at present on recruitment to Orissa Judicial Service Officers should undergo a course of training specially designed for them at the field and at the Gopabandhu Academy of Administration and Madhusudan Institute or Accounts and Finance.

(vii) In the State of California in the U.S.A plaques are awarded to the Trial Judge or Magistrate of the year in recognition of Judicial Intergrity Brilliant and outstanding judicial achievement by rendering best service to the country. Introduction of such recognition to individual magistrates by the High Court for disposal, courtesy and thoroughness may be considered. The achievement of individual magistrates may

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be informed to the Information and Public Relation Dept. besides the Magistrate of the district so that the DPRO publicizes such achievements and the litigant public feels that magistrates are there to help them in getting prompt justice by reaching at the truth. They do not feel as the Governor Sri Y.N.Sukthanker had said at the inaugural ceremony in 1960 that the law is "a mouse trap easy to enter but not easy to get out of."

A friend of mine recently received summons as a witness from a Magistrate written on a postcard. It read

IN THE COURT OF SRI J.M,
JUDICIAL MAGISTRATE FIRST CLASS,
CUTTACK U.I. Case no.17/92

You are hereby directed to appear before this court on 16.2.94 at 10.30am to give evidence in the above case.

Sd/-
JMFC

Postscript reads with your wife Kuntala kumari Mohanty. The post card is addressed to Narendra Nath Mohanty plot no.39, Kharvel nagar, Bhuabneswar.

Form no.33 of schedule II of the Criminal Procedure Code1973 prescribes the form of summons to a witness. In order to understand what the witness is to testify, he should know who is accused, what is the offence committed, the time and place of commission so that he can give material evidence. The summons form as prescribed warns the witness to appear in time, not to depart without leave of the court and not to neglect or refuse to appear without just excuse so that a warrant will be issued to compel his attendance. The essentials of the summons are wanting. Moreover a witness can not be compelled to appear with his wife at a public place without knowing what the matter is about. And the funniest part of it is that the magisterate who takes his seat at 11.00 am summoning witness to appear at 10.30am is not prepared to listen. That part of the job is left to the mercy of the learned peshkar who had modified the form in the CrPC obviously on the excuse that printed forms are not available. A person refusing to attend or departing after 10.30am after seeing the Magisterate absent, can not in the circumstances be prosecuted for an offence under section 174IPC.(not obeying a legal process for the personal attendance in a court of justice).

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How the dignity of the subordinate magistrates have been deflated in the past four decades would be apparent from this incident. The late Bhairab Ch. Mohanty was a Dy. Minister in the state cabinet. He was summoned in his personal capacity in a police case as a witness to testify facts he had known over an incident before he took office. He was summoned to appear at 10.30am. He was very punctual Cuttack, Collectorate then, had no adequate space to house magistrates trying cases. There were two rows of temporary thatched buildings. The verandah was open. The windows and doors were broken in some rooms. The stray cattle had to be cleared, the droppings and cowdungs to be removed, the verandah and the room to be washed before it could be utilized as a court room.Not unnaturally the Magistrates used to come at least half an hour late to find accommodation. Sri Mohanty appeared in time, stayed for half an hour , saw nobody in the court and left. He complained to the Revenue Commissioner the unpunctuality of magistrates summoning witnesses and the circumstances that made him leave the place. The Commissioner called for the explanation of the trying Magisterate through the D.M Cuttack. The Magisterate before submitting his explanation asked Sri Mohanty to show cause against prosecution under section 174 I.P.C as by his own admission he had left the court after attendance without obtaining permission from the court, Sri Mohanty sought legal advice and when satisfied that he was at fault- a gentleman as he was- withdrew his complaint to the Revenue Commissioner and as Dy. Minister (works) initiated budgetary provision for funds for expansion of Cuttack collectorate to house trying magistrates.

I compare it with my experience in a court at San Jose, California that I visited in 1993. In the court premises I was given a pamphlet "Complaints about judicial conduct on the state of California Commission on judicial performance" published by the Commission itself. The commission has nine members- 2 appellate justices, 2 superior court judges, 1 municipal judge all appointed by the California supreme court, 2 lawyers appointed by the State Bar board of Governors, 2 non-lawyers appointed by the State Governor. The commission is an independent state agency that handles complaints about California judges for judicial misconduct or wrong doing. It also handles judicial disability matters. The code of judicial conduct has been adapted by the California's judges association, a private organization since 1974. It consists of broad statements called canons. Intrinsic to all sections of this code are the precepts that judges individually and collectively must represent and honour the judicial office as a public trust and maintain confidence in legal system. It encourages the public in general to file complaint if any grievance is nursed by them. The judicial misconduct has also been described under improper court decorum and other improper or illegal activities including off-bench conduct. Improper courtroom deco-

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rum includes rude abusive or otherwise improper treatment of parties,counsel witness, Jurors, Court staff and others, failing to or refusing to dispose promptly of Judicial business, improper and eccentric conduct while on the bench such as sleeping or drunkenness expression of bias based on gender ethnicity etc. Since the inception of the commission in 1960, the supreme court has removed involuntarily retired or censured several judges based on the commission's recommendation. Many more have been privately disciplined. The commission strives to maintain public confidence in the judiciary and to promote greater awareness of proper judicial behavior. Commission proceedings provides a fair and appropriate mechanism to preserve the integrity of the judicial process"

In Conclusion I would respectfully appeal to the judicial authorities of the State and more particularly Orissa Judicial Officer's Association to adopt a code of judicial conduct and for the creation of a state commission of Judicial Performances. The way the subordinate magistrates have been tormented in the past and administrative inefficiency overlooked and as at present the general public has no voice in the functioning of Courts, the introduction of such a commission to cover all discharging judicial function would boost the morale of such persons who feel that they are being badgered and inspire the confidence of the public by their involvement and participation.

I have told Nothing But the Truth. It is unalatable, but I learnt from a Senior Colleague Magistrate the lines of JR Lowell (1819-1891)

"They are slaves who fear to speak, For the fallen and the weak
They are slaves who dare not be In the right with two or three."

"So slow is Justice in its ways; Beset by more than customary clog,
Going to law in these expensive days; Is much like the same as going to dogs"
- Witlock

- *In the traffic court of one of large Mid-Western cities, a young lady was brought before the Judge to answer a ticket given her for driving through a red light. She explained to His Honor that she was a school teacher and requested an immediate disposal of her case in order that she might hasten away to her classes. A wild gleam came into the Judge's eye. "You are a school teacher, eh ?" said he. "Madam, I shall realize my lifelong ambition. I've waited years to have a school teacher in this court. Sit down at that table and write 'I went through a red light' five hundred times."*

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For the sake of brevity I have omitted chapter, on American Court and their working. I acknowledg my gratitute to the authors and publishers of the books that I have referred to. Anecdotes at the end of each chapter are from the compilation edited by Edmund Fuller.

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